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Federal Register

Friday
April 13, 1984

12 445-504

ITEM-3

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Administrative Practice and Procedure

Food and Drug Administration
Wage and Hour Division

Air Pollution Control

Environmental Protection Agency

Air Traffic Control

Federal Aviation Administration

Endangered and Threatened Wildlife

Fish and Wildlife Service

Government Employees

Personnel Management Office

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Small Business Administration

Marketing Agreements

Agricultural Marketing Service

Meat Inspection

Food Safety and Inspection Service

Over-the-counter Drugs

Food and Drug Administration

Pensions

Pension Benefit Guaranty Corporation

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Agricultural Stabilization and Conservation Service

Quarantine

Animal and Plant Health Inspection Service

Radio

Federal Communications Commission

Research

Air Force Department

Satellites

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Rules and Regulations

Federal Register

Vol. 49, No. 73

Friday, April 13, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 318 and 331

[Docket No. 84-305]

West Indian Sugarcane Root Borer

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations by removing provisions in 7 CFR Parts 318 and 331 concerning restrictions on the interstate movement of certain articles from Hawaii, Puerto Rico and the Virgin Islands of the United States because of the West Indian sugarcane root borer. The provisions in 7 CFR Parts 318 and 331 were removed because there was no longer a basis for imposing such restrictions. The effect of this amendment is to remove all federal regulations concerning West Indian sugarcane root borer.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Edward J. Stubbs, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The amendment has been issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the amendment will have an estimated annual effect on the

economy of less than \$1,000, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291. Also, the Assistant Secretary for Marketing and Inspection Services has waived the requirements of Secretary's Memorandum 1512-1.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. The interim rule deleted restrictions on the interstate movement from Hawaii of sugarcane, or cuttings or parts thereof, sugarcane leaves and bagasse. Based on information available to the Department, there is little, if any, interstate movement from Hawaii of these articles. Further, this situation will not change because of changes made by this document.

The interim rule, which is affirmed by this document, also deleted restrictions on the interstate movement from Puerto Rico and the Virgin Islands of the United States of the following articles:

(1) All trees, plants, and shrubs, and parts or products thereof, for or capable of propagation, except seeds (this includes canes of sugarcane, or cuttings or parts thereof, sugarcane leaves and bagasse); and (2) cut flowers.

The interstate movement of these articles from Puerto Rico and the Virgin Islands of the United States represents an insignificant portion of any of these articles which are moved interstate within the United States. It is not anticipated that this situation would change because of the removal of the restrictions.

Background

A document published in the Federal Register on October 31, 1983 (48 FR

50062-50064), set forth an interim rule amending Parts 318 and 331 of Title 7, Code of Federal Regulations (7 CFR Parts 318 and 331) by removing certain provisions in both parts relating to the interstate movement of articles because of root borer. Specifically, the interim rule removed provisions in 7 CFR 318.16 and 318.16a concerning restrictions on the interstate movement of certain articles from Hawaii, Puerto Rico, and the Virgin Islands of the United States because of the West Indian sugarcane root borer (root borer); and removed emergency regulations in 7 CFR 331.7 concerning restrictions on the interstate movement of certain articles from Puerto Rico and the Virgin Islands of the United States because of the root borer. These provisions in 7 CFR 318.16, 318.16a, and 331.7 were designed to restrict the interstate movement of articles from Hawaii, Puerto Rico, and the Virgin Islands of the United States to prevent the spread of the root borer. These restrictions were removed because it was determined that there was no longer a basis for imposing such restrictions on the interstate movement of regulated articles.

As a result of the interim rule, there are no longer in effect any federal regulations concerning the root borer.

The interim rule became effective upon publication. It was published as an emergency rule without prior opportunity for public comment so that unnecessary restrictions imposed on the interstate movement of certain articles could be removed from the regulations.

Comments were solicited for 60 days after publication of the amendment. No comments were received in response to the amendment. The factual situation which was set forth in the document of October 31, 1983, still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the Federal Register on October 31, 1983.

List of Subjects

7 CFR Part 318

Agricultural commodities, Guam, Plant pests, Plants (Agriculture), Puerto Rico, Quarantines, Soil, Sugarcane, Transportation, Virgin Islands.

7 CFR Part 331

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantines, Root

borer, Transportation, West Indian Sugarcane.

(Secs. 8, and 9, 37 Stat. 318, as amended, secs. 105 and 106, 71 Stat. 32 and 33, as amended (7 U.S.C. 161, 162, 150dd, 150ee); 7 CFR 2.17, 2.51 and 371.2)

Done at Washington, D.C., this 10th day of April 1984.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-9089 Filed 4-12-84; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 425

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of Sales Closing Date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for peanut crop insurance in all areas with a March 31, closing date, effective for the 1984 crop year only. This action is necessary because of recent changes made by FCIC relative to treatment of segregation II and III peanuts. The intended effect of this notice is to advise all interested parties of the extension of the sales closing date to comply with the provisions of the crop insurance regulations with respect to the authority of the Manager, FCIC, to extend sales closing dates.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in 7 CFR 425.7, the closing date for accepting applications for peanut crop insurance in certain counties is March 31. Because of changes made by FCIC in the method of treatment of Segregation II and III peanuts for insurance purposes, FCIC is extending the sales closing date in all counties in all States with a March 31 closing date. Present insureds have received notification of the changes made by FCIC and the additional time to consider such changes in their insurance needs. Applicants for such insurance will be advised of the changes at the time application is made.

Under the authority contained in 7 CFR 425.7, the sales closing date for

accepting applications may be extended by placing the extended date on file in the service office and by publishing a notice in the *Federal Register* upon determination that no adverse selectivity will result from such extension. If adverse conditions develop during such period, FCIC will immediately discontinue acceptance of applications.

Notice

Accordingly, pursuant to the authority contained in 7 CFR 425.7, the Federal Crop Insurance Corporation herewith gives notice that the closing date for accepting applications for peanut crop insurance for all areas with a March 31 closing date is hereby extended through the close of business on April 14, effective for the 1984 crop year only.

(Sec. 506, 516, Pub. L. 75-430; 52 Stat. 73, 77, as amended; 7 U.S.C. 1506, 1516)

Done in Washington, D.C., on March 30, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: April 5, 1984.

Edward Hews,

Acting Manager.

[FR Doc. 84-9084 Filed 4-12-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

7 CFR Part 795

Provisions Common To More Than One Program; Payment Limitation

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the regulations at 7 CFR Part 795 which provide for a limitation on the amount of payment which a person is entitled to receive under certain commodity programs. The rule would delete references to specific statutory citations and to both the monetary amounts of the payment limitations and the crop years to which such limitation would be applicable. The rule would further provide that the applicability of the payment limitation requirement of Part 795 and the amount of any such payment limitation would be prescribed in individual program regulations. In addition, the rule would delete certain provisions of Part 795 which have been incorporated in the individual commodity regulations.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT:

William Harshaw (ASCS), 202-447-7634.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and number of the Federal assistance program to which this final rule applies are: Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Rice Production Stabilization, 10.065; and Wheat Production Stabilization, 10.058; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service is not required by U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The promulgation of the maximum payment limitation regulations found at 7 CFR Part 795 have, prior to the enactment of the Agricultural Food Act of 1981, been authorized by a number of different statutes. These include the Agriculture and Consumer Protection Act of 1970, the Agricultural Act of 1973, the Rice Production Act of 1975, the Food and Agriculture Act of 1977, and the Agricultural Adjustment Act of 1980. Each of the statutes in question has imposed varied maximum payment limitation requirements with respect to commodity programs for different crop years and for different amounts.

Currently, the maximum payment limitations requirements are authorized by Section 1101 of the Agricultural Act of 1981. Section 1101(1) of the 1981 Act provides that the total amount of payments, excluding disaster payments, which a person shall be entitled to receive under one or more of the annual programs for wheat, feed grains, upland cotton, and rice for each of the 1982 through 1985 crops shall not exceed \$50,000. Section 1101(1) was amended by the Extra Long Staple Cotton Act of 1983 (Pub. L. 98-88) to add extra long staple cotton as a commodity program which

would be included in those programs which are subject to the maximum payment limitation. Also, Section 1101(2) of the 1981 Act provides that the total amount of disaster payment which a person shall be entitled to receive under one or more of the annual programs for wheat, feed grains, upland cotton, and rice for each of the 1982 through 1985 crops shall not exceed \$100,000.

In the past, each new statute which authorized the imposition of payment limitation requirements or changed the amount of such limitation has required a corresponding amendment to Part 795. In addition, these statutes have required amendments to or revisions of the regulations which implement the individual commodity programs under which the payments subject to the limitation are made. In order to obviate the need to amend the payment limitation regulations to change obsolete references each time new farm legislation is enacted, this final rule deletes specific statutory citations from Part 795 and makes these regulations applicable when specified in individual program regulations.

Accordingly, § 795.1 of the regulations is deleted and § 795.2 is revised to provide that Part 795 will be applicable to a commodity when made applicable by individual program regulations. In addition, since §§ 795.18 and 795.19 have been incorporated as a part of the regulations governing the commodity programs which are found at 7 CFR Part 713, these sections are being deleted from Part 795. Also, a new § 795.12 has been added to list the numbers which have been assigned to Part 795 by the Office of Management and Budget in accordance with the Paperwork Reduction Act. The table of contents has been revised accordingly.

Since the only purpose of this rule is to make technical changes to Part 795 by deleting obsolete references and providing that the part will be applicable to commodity programs as indicated by individual program regulations, it has been determined that no further public rulemaking is required. Accordingly, this rule shall become effective upon the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 795

Price support programs.

Final Rule

Accordingly, the regulations at Part 795, Chapter VII, Title 7 of the Code of Federal Regulations are amended as follows:

PART 795—[AMENDED]

1. The authority is revised to read as follows:

Authority: 7 U.S.C. 1308.

§ 795.1 [Removed]

2. Section 795.1 is removed and reserved.

3. Section 795.2 is revised to read as follows:

§ 795.2 Applicability.

(a) The provisions of this part are applicable to payments when so provided by the individual program regulations under which the payments are made. The amount of the limitation shall be as specified in the individual program regulations.

(b) The limitation shall be applied to the payments for a commodity for a crop year.

§§ 795.18 and 795.19 [Removed]

4. Sections 795.18 and 795.19 are removed and reserved.

5. A new § 795.23 is added to read as follows:

§ 795.23 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR Part 795) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0096.

Signed at Washington, D.C. on April 4, 1984.

Everett Rank,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-9924 Filed 4-12-84; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 323]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period April 13-19, 1984. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the

marketing situation confronting the orange industry.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1983-84. The marketing policy was recommended by the committee following discussion at a public meeting on February 14, 1984, at Ventura, California. The committee met again publicly on April 3, and 10, 1984, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared policy of the Act to make this regulation provision effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders,
California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. Section 908.623 is added as follows:

§ 908.623 Valencia Orange Regulation 323.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period April 13, 1984 through April 19, 1984, are established as follows:

- (a) District 1: 62,531 cartons;
- (b) District 2: 37,513 cartons;
- (c) District 3: Unlimited cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: April 10, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 84-9988 Filed 4-12-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 459]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 250,000 cartons during the period April 15-21, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: April 15, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the

Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on April 10, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemon is poor.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders,
California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.759 is added as follows:

§ 910.759 Lemon Regulation 459.

The quantity of lemons grown in California and Arizona which may be handled during the period April 15, 1984, through April 21, 1984, is established at 250,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: April 11, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 84-10102 Filed 4-12-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Parts 920 and 925**

[Docket No. 40215-13]

Coastal Zone Management Program Development Grants and State Coastal Zone Management Program

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Removal of parts.

SUMMARY: Part 920 of this title was issued in 1977 to prescribe procedures for issuance of Program Development Grants authorized by Section 305 of the Coastal Zone Management Act. Part 925 was issued in 1975 to describe the Federal approval requirements for a state coastal zone management program. Part 923 of this title, issued on March 28, 1979, and amended on October 20, 1981, superseded Parts 920 and 925 by consolidating and expanding the requirements for these programs. Due to an oversight, action to remove these regulations from the Code of Federal Regulations has not been undertaken until now.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT:

JoAnn Chandler, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, telephone: (202) 634-4245.

SUPPLEMENTARY INFORMATION: NOAA requested public comments in 1979 on the notice of proposed rulemaking on 15 CFR Part 923 which superseded 15 CFR Parts 920 and 925. Therefore, in compliance with 5 U.S.C. 553(b)(B), NOAA finds it unnecessary at this time to request public comments and provide advance notice regarding the removal of 15 CFR Parts 920 and 925. Since the rulemaking does not require notice and comment under 5 U.S.C. 553, it is not subject to the Regulatory Flexibility Act. It also is not a major rule as defined in Executive Order 12291, and the removal of 15 CFR Parts 920 and 925 will impose no information collection requirements under the Paperwork Reduction Act of 1980. Necessary findings in accordance with other applicable laws and regulations were made at the time 15 CFR Part 923 superseded 15 CFR Parts 920 and 925.

PARTS 920 AND 925—[REMOVED]

Accordingly, under the authority of the Secretary of Commerce contained in Section 317 of the Coastal Zone Management Act, 15 CFR Parts 920 and 925 are hereby removed and revoked.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: February 6, 1984.

William Matuszeski,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 84-9920 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-08-M

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 12****Exercise of Commission Jurisdiction Over Reparation Claims That Involve Extraterritorial Activities by Respondents**

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of Policy.

SUMMARY: The staff of the Commodity Futures Trading Commission ("Commission") has recently received inquiries concerning the exercise of Commission jurisdiction, under Section 14 of the Commodity Exchange Act ("Act"), over reparation claims that involve extraterritorial activities by respondents. The Commission has chosen to set forth its present policy on this issue for the benefit of members of the bar, the commodities industry and the public at large. Whether the Commission will exercise jurisdiction in these reparation cases depends upon: (1) The respondent's registration status, (2) the nature and impact of the respondent's alleged unlawful conduct in relation to the United States, and (3) the inconvenience of the reparations forum.

FOR FURTHER INFORMATION CONTACT:

R. Britt Lenz, Director, Office of Proceedings, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-6790, or Jeri E. Ruscoll, Esq., Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-9880.

SUPPLEMENTARY INFORMATION: The following statement of policy applies to extraterritorial issues raised by private litigants or by the Commission in reparations cases. It is intended to provide guidance to interested persons

and the public at large concerning the circumstances in which the Commission will exercise reparations jurisdiction where the claim involves extraterritorial activities by respondents. In many cases raising these issues, the respondent is a nonresident of the United States. As will be discussed below, the statement of policy does not reflect the Commission's position on these issues in law enforcement cases brought by the Commission. Those cases implicate different policy considerations and congressional purposes than reparations cases brought by private parties under Section 14 of the Act.

I. Registration Status

Under Section 14(a) of the Act, as amended by the Futures Trading Act of 1982 effective May 11, 1983, the Commission has jurisdiction over claims raised by "any person complaining of any violation of any provision of this Act or any rule, regulation, or order issued pursuant to this Act by any person who is registered under this Act. * * * 7 U.S.C. 18(a) (1982).¹ Prior to enactment of the Futures Trading Act of 1982, Section 14(a) had provided the Commission with jurisdiction over reparations claims filed against "any person who is registered or required to be registered under section 4d, 4e, 4k, or 4m of this Act. * * *" (emphasis supplied.)

Therefore, each complaint filed prior to May 11, 1983 is examined to ascertain whether the facts alleged show that the respondent is (a) registered or (b) required to be registered under the Act. Because the Futures Trading Act of 1982 deletes the "required to be registered" language from Section 14(a), a "required to be registered" analysis is not performed for cases brought on or after May 11, 1983, the effective date of the amendments.²

¹ The Commission's jurisdiction extends to claimants who are nonresidents of the United States. A nonresident claimant is required to furnish a bond, but the Commission may waive the bond if the claimant is a resident of a country that permits United States residents to file a complaint without furnishing a bond. See Section 14(c) of the Act and 17 CFR 12.13(b)(4), as added by 49 FR 6602 (Feb. 22, 1984).

² Congress removed the phrase "or required to be registered" in Section 14(a) because it recognized that "unregistered firms and individuals often file in bankruptcy, are destitute, or have disappeared by the time a claim is asserted, resulting in uncollectible reparations awards," and that claims against such persons "delay the entire reparations process." H.R. Rep. No. 565, 97th Cong., 2d Sess. 56 (1982); see also S. Rep. No. 384, 97th Cong., 2d Sess. 48 (1982).

For purposes of administering new Section 14(a), the Commission's position is that the relevant inquiry is whether the person was registered at the time of the alleged violation, not when the claim is filed. See 48 FR 21923 (May 16, 1983).

In the absence of a factual allegation in the complaint, the Commission's public records may disclose the fact of registration. Activities normally requiring registration are set forth in various definitional and licensing provisions of the Act and in various portions of the Commission's regulations. See also *Damiani v. Futures Investment Co.* [1980-1982 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶21,097 at 24,416 (CFTC Sept. 3, 1980) (whether a person is "required to be registered" depends on nature of activities allegedly carried out by the respondent). However, in determining whether an apparent nonresident respondent is required to be registered, the Commission has historically employed the standards set forth below.

Absent a contrary statutory or regulatory provision, registration has been required by the Commission if: (i) The individual or firm engaged in the prescribed activities is based in the United States; or (ii) the individual or firm engages in the prescribed activities with customers in the United States; or (iii) the prescribed activities engaged in by the individual or firm take place or originate in the United States. These standards reflect relevant principles of international law. A government may regulate conduct within its borders even if the effect of the conduct occurs outside its borders (the "conduct test"), and may regulate conduct that has an effect within its borders even if it originates outside its borders (the "effects test").³ Under these standards, foreign individuals or firms that deal solely with foreign customers and that do not conduct business in or from the United States have not been required to register.⁴

³ *Restatement (Second) of Foreign Relations Law of the United States* section 17-18 (1965).

⁴ Thus, "foreign brokers," who are essentially the counterpart of domestic futures commission merchants, have not been required to register with the Commission. Nevertheless, these entities are required to comply with other provisions of the Act because their activities have an effect on United States markets. See n.3 and accompanying text, *supra*. See also *In the Matter of Wiscope, S.A.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,765 (CFTC Mar. 19, 1979), vacated on other grounds *sub nom. Wiscope S.A. v. Commodity Futures Trading Commission*, 604 F.2d 764 (2d Cir. 1979). The effects test could serve as a basis for requiring foreign brokers to register as futures commission merchants, but the Commission has not so interpreted the definition of futures commission merchant contained in Section 2(a)(1)(A) of the Act.

The Commission has exempted from registration foreign associated persons of domestic futures commission merchants whose business is confined outside the United States. See 45 FR 18360 (Mar. 20, 1980). The reason cited for this exemption (the Commission's limited resources) and the fact that such persons were previously "required to be

Continued

If, after applying these standards to the factual allegations in a complaint filed prior to May 11, 1983, it appears that the nonresident respondent is not registered or required to be registered, the complaint is normally dismissed for lack of reparations jurisdiction. And, by virtue of the Futures Trading Act of 1982, if it appears from the factual allegations in a complaint filed on or after May 11, 1983 that the respondent is not registered, the complaint as to that respondent is similarly dismissed for lack of jurisdiction.⁶ Dismissal for these reasons will occur irrespective of whether the complainant is a resident or nonresident of the United States.

II. Nature and Impact of Alleged Unlawful Conduct; Inconvenience of the Reparations Forum

Even where a reparations complaint alleges facts (or other information is available, *see* n.5, *supra*) sufficient to establish that the respondent is registered (or in cases filed prior to May 11, 1983, registered or required to be registered), the complaint may still be dismissed for either of two other reasons. First, dismissal may be appropriate pursuant to an analysis of the nature and impact of the alleged unlawful conduct. Under this analysis, when a reparations claim involves predominantly foreign conduct, the Commission will dismiss the complaint if the respondent has engaged in insufficient United States activities, under either the conduct or effects tests. *See* n.3 and accompanying text, *supra*.⁷

registered" does not reflect the Commission's interpretation that such persons could not again be required to register with the Commission.

⁶ Of course, the complaint is not dismissed based on these factual allegations if the Commission knows that the respondent is, in fact, registered. Similarly, a complaint filed prior to May 11, 1983 is not dismissed if the Commission has sufficient reason to believe that the respondent has engaged in activity requiring registration. For example, other complaints against the respondent may have made allegations sufficient to establish a registration requirement, or the respondent may have previously been found in another reparation case to have engaged in activities requiring registration.

The Commission notes also that Congress and the Commission have exempted certain commodity trading advisors and the Commission certain commodity pool operators from registration requirements under the Act, but have provided that these persons remain subject to reparation proceedings. *See* Section 4m of the Act and 17 CFR 4.15.

⁷ The Commission's approach to its reparation jurisdiction is supported by relevant judicial decisions under the Act and the federal securities laws. *See Psimenos v. E.F. Hutton & Co.*, 722 F.2d 1041 (2d Cir. 1983); *Tamari v. Bache & Co. (Lebanon)* S.A.L., No. 83-2452 (7th Cir. Mar. 30, 1984); *Cresswell v. Prudential-Bache Securities, Inc.*, 2 Comm. Fut. L. Rep. (CCH) ¶ 22,011 (S.D.N.Y. 1984); *Alpa S.A. Agroindustrial Aleman v. ACLI International, Inc.*, 573 F. Supp. 1070 (S.D.N.Y. 1983); *Mormels v. Girofinance S.A.*, 544 F. Supp. 815

Of course, regardless of the nature of the respondent's activities, the complaint must allege some connection between those activities and damages alleged, or the complaint will be dismissed for failure to state a cause of action.

Second, even where there are sufficient domestic activities under the conduct or effects test, the Commission may also dismiss the reparations complaint based on an analysis similar to the judicial doctrine of *forum non conveniens*, i.e., if trial in the reparations forum would present substantial inconvenience to the respondent or to the Commission. Dismissal on this basis would be appropriate if the Commission were satisfied that the case could be litigated or otherwise resolved in a foreign jurisdiction, and also determined, for example, that evidence and witnesses were located outside the United States and could not readily be made available in this country or that to hear the case would likely result in a protracted proceeding that would substantially interfere with the disposition of other pending reparation cases, or otherwise pose undue administrative or legal problems for the Commission. Dismissal based on these factors is particularly appropriate where both the complainant and the respondent are non-residents of the United States.⁷

In dismissing a complaint for either of the foregoing reasons, of course, each reparations case must be viewed in the context of its own unique facts concerning the claim of the complainant and the activities of the respondent. In addition, in developing this policy and applying these principles, the Commission has been particularly cognizant of the purposes that the reparations program is designed to serve. Congress enacted the reparations provisions in 1974 to provide a forum analogous to a small claims court for the

(S.D.N.Y. 1982). *See also Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974 (2d Cir.), cert. denied 423 U.S. 1018 (1975); *ITT v. Vencap, Ltd.*, 519 F.2d 1001 (2d Cir. 1975); *ITT v. Cornfeld*, 619 F.2d 909 (2d Cir. 1980); *SEC v. Kasser*, 548 F.2d 109 (3d Cir.), cert. denied 431 U.S. 938 (1977); *Continental Grain (Australia) Pty., Ltd. v. Pacific Oilseeds, Inc.*, 592 F.2d 409 (8th Cir. 1979); *Grunenthal GmbH v. Hotz*, 712 F.2d 421 (9th Cir. 1983). In the view of the Commission, reparations jurisdiction exists where the complaint alleges violations of the Act occurring abroad in connection with transactions executed on domestic contract markets regulated by the Commission. *See Psimenos, supra* (applying the conduct test); *Tamari, supra* (applying the conduct and effects tests).

⁷ For a discussion of the doctrine of *forum non conveniens*, see generally *Fustok v. Banque Populaire Suisse*, 541 F. Supp. 506 (S.D.N.Y. 1982) and cases cited therein; *see also Cresswell v. Prudential-Bache Securities, Inc.*, 2 Comm. Fut. L. Rep. (CCH) ¶ 22,011 at 28,548 (S.D.N.Y. 1984).

resolution of a private party's claim against an industry professional. *See* H.R. Rep. No. 975, 93d Cong., 2d Sess. 22-23 (1974); S. Rep. No. 850, 95th Cong., 2d Sess. 18 (1978). Consistent with this goal, Congress also provided in 1974 that a hearing need not be held and documentary evidence would be sufficient proof of a claim where the damages alleged did not exceed \$2,500. 7 U.S.C. 18(b) (1976). In 1978, Congress raised this figure to \$5,000 in order to increase the number of disputes that could be resolved without a hearing. 7 U.S.C. 18(b) (Supp. IV 1980). Most recently, Congress in 1982 again amended Section 14 to empower the Commission to promulgate new rules to revise the reparations program in order to make it a more efficient and expeditious forum to resolve these private disputes. 7 U.S.C. 18(b) (1982); *see* S. Rep. No. 384, 97th Cong., 2d Sess. 48 (1982); H.R. Rep. No. 565, 97th Cong., 2d Sess. 55 (1982).⁸ Accordingly, in exercising reparations jurisdiction over non-resident respondents, the Commission must be satisfied that there is both a sufficient domestic nexus in the relationship or transaction between the complainant and the respondent and that trial of the particular claim in the reparations forum will be relatively prompt so as to effectuate the Congressional purposes in enacting Section 14 of the Act.

The Commission wishes to emphasize, however, that its approach to its reparations jurisdiction is not intended, and should not be read, to reflect the position it may adopt in administrative or judicial law enforcement cases. The conduct or effects test scales decidedly upward in reparations cases where a relationship must exist between a customer's claim and the particular unlawful activities of a respondent. No such relationship must exist in the law enforcement contest.⁹ Moreover, in contrast to reparations cases which are initiated to address private grievances, proceedings instituted by the Commission to discharge its duty to enforce the law seek to vindicate the public interest as a whole. Similarly, principles of *forum non conveniens* applied in private litigation are less

⁸ The Commission has promulgated rules to implement this new authority. *See* 49 FR 8602 (Feb. 22, 1984). The Commission has retained the concept of permitting reparations cases to be adjudicated without the necessity of an oral hearing. *See, e.g.*, Rule 12.100(b).

⁹ Indeed, the Commission's enforcement authority may properly be invoked to enjoin violations of the Act or Commission rules which have not yet occurred, or which have not yet resulted in any particularized harm to a specific customer, but which nevertheless pose risks to the marketplace.

relevant in law enforcement cases. By their nature, enforcement cases may prove protracted and expensive to litigate and often involve complex fact patterns, a variety of potential violations, various segments of the marketplace, a multiplicity of respondents, and both domestic and foreign parties, witnesses and transactions. The public interest considerations involved in Commission prosecutions to sanction wrongdoing and prevent future violations outweigh any interest a particular respondent may have to litigate in a more convenient forum.

III. Conclusion

The Commission reviews each reparations complaint pursuant to the registration and extraterritorial analysis discussed above. However, the Commission will no longer undertake a "required to be registered" analysis with respect to complaints filed on and after May 11, 1983, the effective date of the amendments to Section 14 of the Act.

A complaint normally will be dismissed as to any respondent and not forwarded to that respondent for answer if, from the facts alleged in the complaint, it appears—

(1) In regard to a complaint filed prior to May 11, 1983, that the respondent is not registered or required to be registered, or

(2) In regard to a complaint filed on or after May 11, 1983, that the respondent is not registered, or

(3) Irrespective of when the complaint is filed and regardless of the respondent's registration status,

(a) That the respondent did not participate in any activity in, or with customers located in, this country that can reasonably be viewed as conduct substantial to the alleged violation, or

(b) That the respondent did not participate in any activity having a sufficient effect on matters regulated by the Commission, or

(c) If trial of the claim in the reparations forum would be inappropriate based on principles of *forum non conveniens*.

If the Commission is unable to reach any of these conclusions by virtue of its examination of a complaint or because the record is not sufficiently developed, the complaint will be forwarded to the respondent for an answer in order to ascertain whether further proceedings are appropriate. If, after examining any answer received, the undisputed facts permit the Commission to make any of the conclusions set forth above, the Commission will not institute a proceeding as to that respondent under § 12.26 of the regulations, and the

complainant will be so notified in accordance with § 12.27. See 49 FR 6602 (Feb. 22, 1984). If there remain disputes of fact or if the record is insufficient to permit the Commission to make any of these conclusions, the complaint will be forwarded for an adjudicatory proceeding, assuming, of course, that no other basis, such as the statute of limitations, exists for dismissal of the complaint. During the course of the proceeding, the record may be further developed and the registration or extraterritorial issues thereby resolved.

Issued in Washington, D.C., on April 9, 1984, by the Commission.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 84-9947 Filed 4-12-84; 8:45 am]

BILLING CODE 6341-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 83D-0256]

Electronic Media Coverage of Public Administrative Proceedings Guideline

AGENCY: Food and Drug Administration.

ACTION: Final rule; codification of guideline.

SUMMARY: The Food and Drug Administration (FDA) is issuing a guideline that sets forth the agency's policy and procedures for videotape and other electronic media coverage of the agency's public administrative proceedings. Based on the comments received, FDA has modified the draft policy guide previously published and is publishing it as a formal guideline. The agency will continue to entertain comments on this guideline. This guideline is being codified in 21 CFR Part 10 of the administrative practices and procedures regulations as an aid to those persons that have an interest in FDA's administrative proceedings. This guideline, which is not a rule under the Administrative Procedure Act, is referred to above as a "Final rule" merely to meet the requirements for publication in the Federal Register.

EFFECTIVE DATE: May 14, 1984.

ADDRESS: Written comments regarding this guideline may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ruth Sherman, Office of Legislation and Information (HFW-1), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3150.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 19, 1983 (48 FR 37709), FDA issued a draft policy guide entitled "Videotaping of Public Administrative Proceedings" that outlined policy and procedures the agency viewed as appropriate for videotape media coverage of the agency's public administrative proceedings. A 60-day period was provided for comment; seven comments were received. The comments generally supported the concept of increasing video-media (electronic media) access to public administrative proceedings, but suggested changes in specific provisions of the draft policy guide. The agency has reviewed the comments received and is responding below to the significant issues raised by the comments.

1. One comment suggested that FDA's draft policy guide was in conflict with a constitutional right of access for video reporters established by the Supreme Court. From this premise the comment argued that FDA's draft policy guide discriminated without a rational basis against broadcast journalists.

The agency believes that neither of these points is legally sound. The Supreme Court has never held that there is a Federal constitutional right of access on the part of the broadcast media to televise, electronically record, or disseminate court proceedings, which are, like FDA's administrative proceedings, in the normal course open to other types of journalistic reporting. See *Chandler v. Florida*, 449 U.S. 560, 569 (1980).

Furthermore, the Court has consistently distinguished electronic media coverage from other forms of reporting. The Court has treated electronic media coverage more restrictively than traditional reporting for the obvious, and rational, reason that electronic media technology is inherently more intrusive than traditional reporting. The Court has noted various risks attending electronic media coverage of trials including disrupting the orderly progress of a trial, distracting or otherwise prejudicial impact on jurors, and impairing the quality of testimony due to witness self-consciousness (*Estes v. Texas*, 381 U.S. 532 (1965)). In *Chandler v. Florida*, *supra*, the Supreme Court upheld State court rules allowing television coverage of trials subject to the judge's discretionary powers of control and guidance. The Court noted, apparently with approval, the State's detailed guidelines with respect to the

technology and conduct of electronic media operators covering trials.

The agency, therefore, believes that the guideline that is being published here is consistent with the First Amendment as interpreted by the Supreme Court.

2. Two comments objected to the agency's establishing procedures governing the conduct of the electronic media, and one of these comments expressed a belief that the draft policy guide made the implicit assumption that the presence of electronic media is so disruptive that special warnings and procedures were necessary. The comment argued that electronic media coverage is totally unobtrusive.

The agency regrets that the draft policy guide elicited such a reaction. In fact, the agency's purpose in publishing the draft policy guide was to increase already existing media access to the agency's public administrative proceedings by precluding any arbitrary and inconsistent decisions by presiding officers that would unduly restrict electronic coverage.

However, FDA recognizes that special procedures are being established in this guideline. These procedures are primarily intended to expedite media access to agency public proceedings. The agency disagrees with the comment that electronic media coverage is totally unobtrusive. In fact, a camera by its nature, even if attended by a single crew member standing in front of or to the side of the audience, inevitably intrudes somewhat on the proceeding. Several cameras intrude more. Nevertheless, FDA believes that the agency has an obligation to the public to promote easy media access, and it is for this reason that the policy guide was drafted and public comment solicited. On the other hand, the agency and its designated presiding officers have a responsibility to promote the fair and expeditious conduct of agency hearings. In balancing these two potentially conflicting interests, the agency has decided that a formal guideline will promote uniformity and fairness, and that the policy may be altered at a later time should technology advance to the point at which electronic media coverage is truly unobtrusive.

3. One comment expressed concern that the draft policy guide would establish policy only for videotape media coverage of public administrative proceedings because of the limitation implied by the title of the guide, and that the policy would not clearly apply to radio and television coverage as well.

FDA agrees that the title and terminology used in the draft policy guide do not accurately describe the agency's intent. In fact, the agency

intends that the policy and procedures expressed in this guideline shall apply to all electronic media coverage by any person other than the official reporter. Thus, the agency has decided to adopt the terminology used in the Code of Judicial Conduct issued by the Supreme Court of Florida, and has so changed the title of the guideline to "Electronic Media Coverage of Public Administrative Proceedings; Guideline on Policy and Procedures." The terminology used in the body of the guideline has been changed as well.

4. Nearly all the comments objected to what they perceived as a lack of standards guiding the hearing officer's discretion to terminate electronic media coverage should circumstances require. Several comments urged adoption of a presumption of openness.

FDA agrees with the comments suggesting that a presumption of openness should guide the hearing officer in the exercise of his/her discretion to restrict or terminate electronic media coverage.

Because it is impossible to anticipate every situation that may require termination or restriction of electronic media coverage, the presiding officer must have the discretion, and a certain flexibility in the exercise of that discretion, to restrict or terminate electronic media coverage when the agency's interest in the fair and orderly conduct of its public proceedings is significantly threatened.

Nonetheless, FDA agrees that the presiding officer would be assisted and the public interest protected by the inclusion in the guideline of factors to guide the exercise of discretion. Thus, FDA has added a list of factors, in § 10.206 of the guideline, to consider in balancing the interests of the public in electronic coverage of a proceeding and the interests of the agency in conducting a fair and orderly hearing.

This list obviously cannot be exhaustive. Circumstances impossible to predict in the abstract may require the hearing officer to exercise his/her discretion to limit electronic media coverage of portions of a proceeding.

The agency believes that the guiding presumption of openness, supplemented by the factors in § 10.206 to be considered in deciding a potential conflict, will adequately safeguard the interests of the public and the press by establishing adequate standards for the exercise of discretion.

5. A number of comments asserted that witnesses to a public proceeding should not be allowed to restrict at will the electronic media's coverage of their testimony, because allowing such a restriction subordinates the public

interest to a witness' casual preference for no coverage. The comments argued that there is no more basis for allowing the witness to control electronic media coverage than there is for allowing witnesses to exclude all other press coverage.

The agency has reconsidered its proposed position and now agrees with this comment. The provision in the draft policy guide that would have allowed witnesses to refuse electronic media coverage of their testimony was based on Recommendations of the Administrative Conference of the United States, published in 1972. Upon further consideration, the agency has concluded that the current state-of-the-art of electronic coverage and the degree to which electronic coverage is now commonly accepted in administrative proceedings do not warrant allowing witnesses to decline to have their public testimony recorded electronically by the press. Furthermore, the agency intends to refer in each of its notices of hearing to the possibility that representatives of the electronic media may videotape, film, or otherwise record the proceeding. This policy will become effective May 14, 1984. Thus, persons considering testifying at an FDA public proceeding will be on notice that testimony may be videotaped, filmed, or otherwise recorded. Accordingly, FDA has deleted the provision which would have allowed witnesses to restrict media coverage of testimony. When circumstances demonstrate that electronic media coverage will have a substantial adverse impact on the ability of a witness to testify, and the testimony is necessary to the proceeding, the presiding officer may restrict electronic media coverage of that testimony or portions of that testimony. In so ruling, the presiding officer is to be guided by a presumption that agency public proceedings are open to the electronic media. Only a substantial countervailing interest, such as protection of unusual privacy interests, will suffice to overcome the presumption that all testimony in FDA's public proceedings may be electronically recorded.

6. Several comments objected to the provision that cameras remain stationary during a proceeding on grounds that this requirement would restrict the ability of the electronic media to fully cover a proceeding, especially the audience.

Although FDA concedes that the stationary camera provision may somewhat restrict certain angles of filming during a proceeding, the agency has concluded that this restriction does not impair the ability of the electronic

media to obtain any substantive news information that is in the public interest. The requirement is retained in the original form in this guideline, because the agency believes that the need to maintain order and decorum at public proceedings overrides the desire of the electronic media to obtain a different angle of filming. In addition, because cameras may be rotated upon a tripod, the agency believes the restriction against physically moving the camera does not unduly restrict the media from such practices as panning the audience.

7. A number of comments stated that a 48-hour advance notice requirement is not practical.

FDA believes that the draft policy guide clearly stated that a 48-hour notice is desirable, not absolutely required. FDA implied that, based on the agency's presumption that all public administrative hearings are open to electronic media coverage, the agency would not refuse to allow coverage simply because advance notice was not received 48 hours before the proceeding. The language in this guideline has been modified so that this point is stated more clearly. The agency affirms that the purpose of FDA's requesting advance notice is to enable the agency to make necessary arrangements and thereby be as responsive as possible to the needs of the media.

8. One comment stated that the agency should not require information about the length of intended videotaping.

FDA believes that the language in the draft policy guide in no way implied that this information is required. The agency suggested that advance "notice may include the length of videotaping if known" so that arrangements may be made to accommodate the needs of the media. The draft policy guide stated further that the presiding officer will attempt to make arrangements to respond to the needs of the media by, for example, providing a break shortly after commencement of the proceeding to permit disassembly of equipment in the event that all the media desire is a brief filming. Advance notice will allow the hearing officer to be more responsive to the needs of the media.

Thus, FDA concludes that the language in the draft policy guide is appropriate and should remain in this guideline.

9. Several comments recommended that the responsibility for assigning pools should be left to the broadcast press.

FDA agrees that a pool arrangement operated by the major networks is more suitable than one arranged by the agency. However, the agency has a

strong commitment to providing equal opportunity to interested parties who are not members of the major network's pool, such as other networks and independent reporters.

The agency has decided to follow the recommendations of the comment that proposed that the agency allow the chairman of the network pool committee to designate a representative to record a proceeding electronically and to determine a method of distribution for the resulting film or videotape.

However, the agency is concerned that a copy of the film or videotape be available at cost to parties other than the pooling networks. If this availability cannot be guaranteed before the proceeding, the agency will revert to the system originally proposed, i.e., FDA would grant permission to record based on the earliest advance notice received for each major group desiring to cover the proceeding in question.

10. One comment stated that the agency should not require any pooling arrangements, but rather should provide that proceedings be held in rooms large enough to accommodate all persons interested in attending.

Although the request for early advance notice is intended to allow the agency to hold proceedings in rooms large enough to accommodate all representatives of the electronic media and their equipment, the agency cannot guarantee that every public proceeding will be held in such rooms. Adequate arrangements for space will be made by the agency whenever it is within its power to do so, without need to reschedule the proceeding. Special hearing rooms must be reserved in advance, and because FDA does not know who will attend a given proceeding, the agency believes that it cannot justify scheduling all of its hearings in special rooms when in most cases the agency's own hearing room (or meeting rooms, for informal proceedings) will provide adequate space. The agency also believes that pool sharing is commonly required of the media in other circumstances, and in those cases where the agency may be forced to resort to this practice, it is justifiable.

11. One comment requested that the agency define unobtrusive lighting, referring to the policy draft guide's admonition that "artificial lighting should be unobtrusive."

FDA believes it inappropriate to define unobtrusive lighting, because the variables which relate to whether lighting is obtrusive in a particular setting are not subject to anticipation or to agency control. Physical conditions in the room on a given day may be

uncomfortably warm depending on ambient temperature, the number of people attending the hearing, building services outside the control of the agency, and the duration of the hearing. In such a situation, the extra heat from artificial lights might cause noticeable discomfort to attendees. However, the same lights might present no problem at all, given cooler ambient temperature, fewer attendees in the hearing room, adequate climate control services, and a short hearing.

The agency urges representatives of the electronic media to use the most indirect and unobtrusive method of lighting suitable in situations where artificial lights are necessary, so as to avoid heat and glaring lights that may disturb the participants in FDA's proceedings.

12. One comment requested that the agency provide specifically for expeditious handling of an appeal. The same comment also requested that the proceeding be interrupted pending resolution of the appeal.

FDA affirms that the agency intends to resolve all appeals in an expeditious manner, whether they are submitted before a proceeding commences or during the course of a proceeding. Because an interruption of the proceeding could cause a substantial interference with the fair and orderly progress of the hearing, FDA declines to require a mandatory interruption of a proceeding pending resolution of an appeal. However, the agency views this guideline as establishing formally an open and cooperative approach to electronic coverage of public administrative proceedings, and therefore does not anticipate any great usage of the appeal system. However, should such a situation arise, the appeal will be resolved as expeditiously as possible.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Publ. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 879(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29

Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 10 is amended by adding new Subpart C to read as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

Subpart C—Electronic Media Coverage of Public Administrative Proceedings; Guideline on Policy and Procedures

Sec.

10.200 Scope.

10.203 Definitions.

10.204 General.

10.205 Electronic media coverage of public administrative proceedings.

10.206 Procedures for electronic media coverage of agency public administrative proceedings.

Authority: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b); Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.), unless otherwise noted.

Subpart C—Electronic Media Coverage of Public Administrative Proceedings; Guideline on Policy and Procedures

§ 10.200 Scope.

This guideline describes FDA's policy and procedures applicable to electronic media coverage of agency public administrative proceedings. It is a guideline intended to clarify and explain FDA's policy on the presence and operation of electronic recording equipment at such proceedings and to assure uniform and consistent application of practices and procedures throughout the agency.

§ 10.203 Definitions.

(a) "Public administrative proceeding" as used in this guideline means any FDA proceeding which the public has a right to attend. This includes a formal evidentiary public hearing as set forth in Part 12, a public hearing before a Public Board of Inquiry as set forth in Part 13, a public hearing before a Public Advisory Committee as set forth in Part 14, a public hearing before the Commissioner

as set forth in Part 15, a regulatory hearing before FDA as set forth in Part 16, consumer exchange meetings, and Commissioner's public meetings with health professionals.

(b) "Advance notice" as used in this guideline means written or telephone notification to FDA's Office of Legislation and Information (Press Relations Staff) of intent to electronically record an agency public administrative proceeding.

(c) "Electronic recording" as used in this guideline means any visual or audio recording made by videotape recording equipment or moving film camera, and/or other electronic recording equipment.

§ 10.204 General.

FDA has for many years willingly committed itself to a policy of openness. In many instances FDA has sought to make the open portions of agency public administrative proceedings more accessible to public participation. Similarly, FDA has sought, wherever possible, to allow full written media access to its proceedings, so that members of the press would have the opportunity to provide first-hand reports. However, because electronic media coverage presents certain difficulties that are easier to resolve with advance notice to the agency and all participants, FDA believes that codification of its policy will facilitate and further increase media access to its public administrative proceedings. The agency intends to refer to this guideline when notices of hearing, or individual advisory committee meetings, are published in the *Federal Register*. Thus, all parties to a proceeding will be on notice that the proceeding may be recorded electronically and any person interested in videotaping or otherwise recording the proceeding will be notified that there are established procedures to be followed.

(b) The designated presiding officer of a public administrative proceeding retains the existing discretionary authority set forth in specific regulations pertaining to each type of administrative proceeding to regulate the conduct of the proceeding over which he or she presides. The responsibilities of the presiding officer, established elsewhere in Parts 10 through 16, include an obligation to be concerned with the timely conduct of a hearing, the limited availability of certain witnesses, and reducing disruptions to the proceeding which may occur. Each proceeding varies, and the presiding officer cannot anticipate all that might occur. Discretionary authority to regulate conduct at a proceeding has traditionally been granted to presiding

officers to enable them to fulfill their responsibility to maintain a fair and orderly hearing conducted in an expeditious manner.

(c) This guideline provides the presiding officer with a degree of flexibility in that it sets forth the agency's policy as well as the procedures that presiding officers should ordinarily follow, but from which they may depart in particular situations if necessary, subject to the presumption of openness of public proceedings to electronic media coverage. The presiding officer's discretion to establish additional procedures or to limit electronic coverage is to be exercised only in the unusual circumstances defined in this guideline. Even though a presiding officer may establish additional procedures or limits as may be required in a particular situation, he or she will be guided by the policy expressed in this guideline in establishing these conditions. The presiding officer may also be less restrictive, taking into account such factors as the duration of a hearing and the design of the room.

(d) If a portion or all of a proceeding is closed to the public because material is to be discussed that is not disclosable to the public under applicable laws, the proceeding also will be closed to electronic media coverage.

(e) The agency requests advance notice of intent to record a proceeding electronically to facilitate the orderly conduct of the proceeding. Knowledge of anticipated media coverage will allow the presiding officer to make any special arrangements required by the circumstances of the proceeding. The agency believes that this guideline establishes sufficiently specific criteria to promote uniformity.

(f) The agency would like to allow all interested media representatives to videotape a proceeding in which they have an interest. However, should space limitations preclude a multitude of cameras, the presiding officer may require pool sharing. In such a case, pool sharing arrangements of the resulting videotape should be made between those allowed to film and those who were excluded. Arrangements for who is designated to present the pool and a method of distributing the resulting film or tape may be determined by the established networks' pooling system. However, the agency has a strong commitment to ensuring that media representatives other than the major networks also be able to obtain a copy of the tape at cost. FDA is concerned that if the network pool representative wishes to record only a short portion of

a proceeding, but an excluded party wishes to record the entire proceeding, confusion will result. The agency expects the interested media representatives to negotiate a suitable agreement among themselves before commencement of the proceeding. For example, the network pool representatives might agree to record a portion of the proceeding up to a break in the proceeding, at which time, while the network representative is disassembling equipment, another media representative might set up to continue recording. If an agreement cannot be reached before the proceeding, the agency will use the time of receipt of any advance notice to determine the representation for each category of media, e.g., one network reporter, one independent reporter. The agency recommends that parties intending to videotape provide as much advance notice as possible, so that the agency may best respond to the needs of the electronic media.

(g) To ensure the timely conduct of agency hearings and to prevent disruptions, equipment is to be stationary during a proceeding and should be set up and taken down when the proceeding is not in progress. As noted previously, the presiding officer may, at his or her discretion, be less restrictive if appropriate.

(h) The agency recognizes that electronic media representatives may desire only short footage of a proceeding, a facsimile of the proceeding, and/or interview opportunities and may be unnecessarily restricted by requirements for setting up before a proceeding and then waiting until a break in the proceeding before being permitted to take down their equipment. To accommodate this possibility, FDA's Press Relations Staff will attempt to make arrangements to respond to such needs by, for example, requesting that the presiding officer provide a break shortly after commencement of the proceeding to permit take down of equipment.

(i) The agency is making a full commitment to allowing, whenever possible, electronic coverage of its public administrative proceedings subject to the limited restrictions established in this guideline.

§ 10.205 Electronic media coverage of public administrative proceedings.

(a) A person may record electronically any open public administrative proceeding, subject to the procedures specified in this guideline. The procedures include a presumption that agency public proceedings are open to the electronic media. Whenever possible,

FDA will permit all interested persons access to record agency public administrative proceedings. Restrictions other than those listed in § 10.206 will be imposed only under exceptional circumstances.

(b) A videotape recording of an FDA public administrative proceeding is not an official record of the proceeding. The only official record is the written transcript of the proceeding, which is taken by the official reporter.

§ 10.206 Procedures for electronic media coverage of agency public administrative proceedings.

(a) To facilitate the agency's response to media needs, a person intending to videotape an FDA public administrative proceeding should, whenever possible, provide advance notice to the Press Relations Staff (HFW-20), Office of Legislation and Information, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, in writing or by telephone (telephone 301-443-4177), at least 48 hours in advance of the proceeding. The Press Relations Staff will inform the presiding officer that the proceeding will be attended by representatives of the electronic media, and ascertain whether any special provisions in addition to those set forth in this subpart are required by the presiding officer. If so, the Press Relations Staff will function as a liaison between the presiding officer and the person intending to record the proceeding in facilitating any procedures in addition to those outlined in this subpart. The presiding officer will not deny access for failure to provide a 48-hour advance notice. Any advance notice may describe the intended length of recording if known, the amount and type of equipment to be used, and any special needs such as interviews.

(b) Cameras should be completely set up before a proceeding is scheduled to begin or during a break in the proceeding and should remain standing in the area designated for electronic media equipment. Cameras may be taken down only during breaks or after the hearing is over. Roving cameras will not be permitted during the proceeding. Any artificial lighting should be unobtrusive. Microphones, like cameras, should be in place before the start of a proceeding and may be taken down as indicated in this paragraph.

(c) When space in the hearing room is limited, the presiding officer may restrict the number of cameras or the equipment present. Should such a restriction become necessary, the pool arrangements are the responsibility of the participating media. The agency encourages the network pool to make

copies of the tape, film, or other product available at cost to nonpool participants. However, if this is not possible, the agency may need to use the time of receipt of any advance notice to determine the representation for each category, e.g., one network reporter, one independent reporter, etc.

(d) "Off the record" portions of a proceeding may not be videotaped.

(e) Before or during the proceeding, the presiding officer may establish other conditions specific to the proceeding for which the request is being made. These conditions may be more or less restrictive than those stated in this guideline, except that the presiding officer shall observe the agency's presumption of openness of its public proceedings to the electronic media. Only a substantial and clear threat to the agency's interests in order, fairness, and timeliness authorizes the presiding officer to impose additional restrictions. This threat must outweigh the public interest in electronic media coverage of agency proceedings. Additional restrictions shall be narrowly drawn to the particular circumstances. The following factors are listed to assist presiding officers in determining whether the agency's interest is sufficiently compelling to call for the unusual step of imposing additional restrictions. Generally this step is justified when one of the following factors is met:

(1) Electronic recording would result in a substantial likelihood of disruption that clearly cannot be contained by the procedures established in paragraphs (a) through (d) of this section.

(2) Electronic recording would result in a substantial likelihood of prejudicial impact on the fairness of the proceeding or the substantive discussion in a proceeding.

(3) There is a substantial likelihood that a witness' ability to testify may be impaired due to unique personal circumstances such as the age or psychological state of the witness or the particularly personal or private nature of the witness' testimony, if the witness' testimony were electronically recorded.

(f) Before the proceeding, the Press Relations Staff will, upon request, provide written copies of any additional conditions imposed by the presiding officer (as described in paragraph (e) of this section) to requesting members of the media. Any appeals should be made in accordance with paragraph (h) of this section.

(g) The presiding officer retains authority to restrict or discontinue videotaping or other recording of a proceeding, or parts of a proceeding,

should such a decision become necessary. The presiding officer's responsibility to conduct the hearing includes the right and duty to remove a source of substantial disruption. In exercising his or her authority, the presiding officer shall observe the presumption that agency public proceedings are open to the electronic media. The presiding officer shall exercise his or her discretion to restrict or discontinue electronic coverage of a public proceeding, or portions of a public proceeding, only if he or she determines that the agency's interest in the fair and orderly administrative process is substantially threatened. A clear and substantial threat to the integrity of agency proceedings must clearly outweigh the public interest in electronic media coverage of the proceedings before additional restrictions are imposed on the electronic media during the course of the proceedings. The factors noted in paragraph (e) of this section indicate the kind of substantial threat to the agency interests that may require imposing additional restrictions during the course of the proceedings. If additional requirements are established during the hearing, the presiding officer shall notify immediately the Deputy Commissioner of Food and Drugs of that fact by telephone and submit a written explanation of the circumstances that necessitated such an action within 24 hours or sooner if requested by the Deputy Commissioner. In the absence or unavailability of the Deputy Commissioner, the presiding officer shall notify the Associate Commissioner for Regulatory Affairs.

(h) A decision by a presiding officer, made either before the proceeding or during the course of a proceeding, to establish requirements in addition to the minimum standards set forth in this guideline may be appealed by any adversely affected person who intends to record the proceeding electronically. Appeals may be made in writing or by phone to the Deputy Commissioner or, in his or her absence, to the Associate Commissioner for Regulatory Affairs. The filing of an appeal, whether before or during a proceeding, does not require the presiding officer to interrupt the proceeding. However, the Deputy Commissioner or, in his or her absence, the Associate Commissioner for Regulatory Affairs will resolve an appeal as expeditiously as possible so as to preserve, to the extent possible, the reporters' opportunity to record the proceedings.

Effective date. This guideline becomes effective May 14, 1984.

(Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 41, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b); Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-579, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1408 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.))

Dated: April 6, 1984.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-9907 Filed 4-12-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

Contract Procedures; Labor and Employment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending its regulation on Federal-aid labor and employment requirements to implement provisions mandated by Section 202 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1984 (Appropriations Act). Section 148 of the Surface Transportation Assistance Act (STAA) of 1982 amended 23 U.S.C. 114(b) by prohibiting the use of materials produced by convict labor on Federal-aid highway projects. Section 148 of the STAA was in effect repealed by Section 202 of Appropriations Act. The regulations implementing 23 U.S.C. 114(b) are revised to reflect the statutory amendment and to delete unnecessary and repetitive language.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. P. E. Cunningham, Chief, Construction and Maintenance Division, (202) 426-0392, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0791, Federal Highway Administration, 400 Seventh Street, SW., Washington,

D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the President signed into law the STAA of 1982 (Pub. L. 97-424, 96 Stat. 2097). Section 148 of the STAA of 1982 amended 23 U.S.C. 114(b) which provided that convict labor cannot be used in the construction of any highway or portion of highway located on a Federal-aid system unless it is performed by convicts who are on parole or probation. Section 148 extended this restriction to materials produced by convict labor. Subsequently, Section 202 of the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act, 1984 (Pub. L. 98-166, 97 Stat. 1085) essentially repealed Section 148 and materials are now allowed to be produced by convict labor for use in the construction of any highway or portion of highway located on Federal-aid systems, as described in Section 103 of Title 23, United States Code. The convict labor provisions as implemented in 23 CFR 635.124(a) are therefore being revised to conform to the provisions of Section 202 and delete unnecessary and repetitive language. A specific provision permitting convict labor to be employed in routine physical maintenance operations which are accomplished outside the time period of the federally funded construction work is unnecessary as it is allowed by existing language.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the revisions in this document substantially reflect statutory language mandated by Section 202 of the Appropriations Act, public comment is unnecessary. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information since the revisions incorporated in the regulation require no interpretation and provide for no discretion. It is anticipated that the economic impact of this rulemaking action, if any, will be positive, since such economic impact would allow the most cost effective procurement of contractor materials. Accordingly, a full regulatory evaluation is not required.

In consideration of the foregoing, and under the authority of 23 U.S.C. 315; 202, Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1984, (Pub. L. 98-166, 97 Stat. 1085); and 49 CFR 1.48(b), the FHWA is amending Part 635, Subpart A of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implement Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—Transportation, Highways and Roads.

Issued on: April 5, 1984.

R. A. Barnhart,
Federal Highway Administrator.

PART 635—CONSTRUCTION AND MAINTENANCE

In § 635.124, paragraph (a) is revised to read as follows:

§ 635.124 Labor and employment.

(a) No convict labor shall be employed in construction or used for maintenance or any other purpose at the site or within the limits of any Federal-aid project from the time of award of the construction contract or the start of work on force account construction until final acceptance of the work by the State highway agency.

[FR Doc. 84-9914 Filed 4-12-84; 8:45 am]

BILLING CODE 4910-22-M

23 CFR Part 652

Pedestrian and Bicycle Accommodations and Projects

Correction

In FR Doc. 84-7646 beginning on page 10661 in the issue of Thursday, March 22, 1984, make the following correction:

On page 10663, first column, in § 652.7, in the first line of paragraph (a), "Independent pedestrian projects" should have read "Independent bicycle projects".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R-84-955; FR 1539]

Section 8 Housing Assistant Payments Program; Existing Housing; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction in the final rule amending the Section 8 Existing Housing Program regulations published on March 29, 1984 (49 FR 12215).

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Existing Housing Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5353 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Accordingly, the following correction is made to FR Doc. 84-8387 appearing on page 12215 and following in the issue of March 29, 1984:

On page 12242, in § 882.215(c)(2), in the middle column, in the twelfth line from the top, remove the words "HUD assisted".

Authority: Section 8, United States Housing Act of 1937 (42 U.S.C. 1437f); section 326(e) of the Housing and Community Development Act of 1981 (Pub. L. 97-35); and section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 9, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-9981 Filed 4-12-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

26 CFR Part 1

Percentage To Be Used by Foreign Life Insurance Companies in Computing Income Tax for the Taxable Year 1983 and Estimated Tax for the Taxable Year 1984

AGENCY: Department of the Treasury.

ACTION: Final rule; proclamation.

SUMMARY: This proclamation announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance

business in the United States.

EFFECTIVE DATE: March 15, 1984.

FOR FURTHER INFORMATION CONTACT:

Mr. Hudson Milner, Office of Tax Analysis, U.S. Treasury Department, Washington, D.C. 20220, (202-566-2705), not a toll free call.

SUPPLEMENTARY INFORMATION: This proclamation, issued each year by the Secretary of the Treasury, announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States.

Proclamation

For purposes of computing the 1983 income tax of foreign corporations carrying on a life insurance business, a percentage of 17.9 shall be used in determining the "minimum figure" under section 819. The same percentage shall be used for purposes of computing the estimated tax and the installment payments of estimated tax for the taxable year 1984. No additions to tax shall be made because of any underpayment of estimated tax for the taxable year 1984 which results solely from the use of this percentage.

This proclamation is issued without notice and public procedure because the public cannot effectively participate in the determination of the percentage. It is computed from information contained in income tax returns that are not open to the public. The proclamation was not published prior to its effective date because the percentage is computed on the basis of data which was not then available.

Ronald A. Pearlman,

Deputy Assistant Secretary (Tax Policy).

March 23, 1984.

[FR Doc. 84-9897 Filed 4-10-84; 11:39 am]

BILLING CODE 4810-25-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 511

Wage Order Procedure for Puerto Rico, the Virgin Islands and American Samoa; Compensation of Committee Members

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document increases from \$153 to \$164 a day the per diem allowance to which members of industry committees in Puerto Rico, the Virgin Islands and American Samoa are entitled. The industry committees,

whose members include representatives of employees, employers and the public, as appointed by the Secretary of Labor, meet periodically to review the wage rates in various industries and to recommend wage increases where appropriate. The committees meet pursuant to the Fair Labor Standards Act which authorized the establishment of minimum wage rates in Puerto Rico, the Virgin Islands and American Samoa which are lower than the mainland minimum wage rate. This increase is in accord with changes in General Schedule salary rates effective January 8, 1984 for regular employees of the U.S. Department of Labor.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: James L. Valin, Assistant Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S3502, Washington, D.C. 20210, 202-523-8353.

SUPPLEMENTARY INFORMATION: It is the standard practice to adjust compensation for Industry Committee members in accordance with changes in General Schedule salary rates. The purpose of this amendment is to increase the compensation of each member of an industry committee from \$153 to \$164 for each day spent in the work of the committee. It accords with changes in General Schedule salary rates effective January 8, 1984 for regular employees of the U.S. Department of Labor.

As this amendment concerns only a rule of agency practice, and is not substantive, notice of proposed rule making, opportunity for public participation and delay in effective date are not required by 5 U.S.C. 553. It does not appear that such participation or delay would serve a useful purpose. Accordingly, this revision shall be effective immediately.

Drafting Information

This document was prepared under the direction and control of James L. Valin, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202-523-8353.

Classification

This rule relates to agency organization, management or personnel pursuant to Section 1(a)(3) of Executive Order 12291. Accordingly, it does not

fall within the definition of "rule" under section 1(a) of the Executive Order.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory analyses, do not apply to this rule.

Paperwork Reduction Act

This rule is not subject to section 350 (h) of the Paperwork Reduction Act, since it would not require the collection or retention of information.

List of Subjects in Part 511

Administrative practice and procedure, Minimum wages, Puerto Rico, Virgin Islands, American Samoa.

PART 511—WAGE ORDER PROCEDURE FOR PUERTO RICO, THE VIRGIN ISLANDS AND AMERICAN SAMOA

Pursuant to authority in section 5 of the Fair Labor Standards Act of 1938 (52 Stat. 1062 as amended; 29 U.S.C. 205) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp. p. 1004), I hereby revise 29 CFR 511.4 to read as follows:

§ 511.4 Compensation of committee members.

Each member of an industry committee will be allowed a per diem of \$164 for each day actually spent in the work of the committee, and will, in addition, be reimbursed for necessary transportation and other expense incident to traveling in accordance with Standard Government Travel Regulations then in effect. All travel expenses will be paid on travel vouchers certified by the Administrator or his authorized representative. Any other necessary expenses which are incidental to the work of the committee may be incurred by the committee upon approval of, and shall be paid upon certification of the Administrator or his authorized representative.

(Sec. 5 of 52 Stat. 1062, as amended (29 U.S.C. 205))

Signed at Washington, D.C., this 6th day of April 1984.

William M. Otter,
Administrator, Wage and Hour Division.

[FR Doc. 84-0898 Filed 4-12-84; 8:45 am]

BILLING CODE 4510-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning May 1, 1984. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after May 1, 1984, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: May 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202-254-6476 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On January 28, 1981, the Pension Benefit Guaranty Corporation ("PBGC") published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1983), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), as amended. The regulation contains formulas for valuing different

types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1983 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods beginning September 2, 1974 through June 1, 1983. The rates and factors adopted for valuing benefits in plans that terminated on or after June 1, 1983 remained in effect until September 1, 1983. On August 15, 1983, the PBGC published new rates and factors for plans that terminated on or after September 1, 1983 (48 FR 36817). That rate remained in effect for plan terminations through the end of January, 1984. In January, February, and March of 1984 the PBGC published new rates and factors for plans terminating during the months of February, March, and April, 1984 (49 FR 1896, 49 FR 6486, and 49 FR 9856). At this time, changes in the financial and annuity markets require an increase in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for plans that terminate on or after May 1, 1984. This interest rate and these factors will remain in effect until such time as PBGC publishes another amendment concerning the rates.

Generally, the rates will be in effect for a least one month. Any change in the rates normally will be published in the *Federal Register* by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after May 1, 1984, and because on adjustment by ongoing plans is required by this amendment, the PBGC finds that

good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of \$100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

Rate set	For plans with a valuation date—		Immediate annuity rate	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
46	4-1-84	5-1-84	9.75	1.0900	1.0775	1.0400	7	8
47	5-1-84		10.00	1.0925	1.0800	1.0400	7	8

Royal S. Dellinger,
Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-9084 Filed 4-12-84; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Modification of the Kentucky Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Director, OSM, is announcing the approval of certain amendments to the Kentucky permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). As a result of a meeting on January 9, 1984, Kentucky submitted, by letter dated January 10, 1984, a proposed program amendment consisting of a revision to its plan for transition to primacy pertaining to the

1. The authority citation for Part 2619 reads as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, and 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025, 1029 (1974) as amended by Secs. 403(1), 403(d), and 402(a)(7), Pub. L. 96-364, 94 Stat. 1302, 1301, and 1299 (1980) [29 U.S.C. 1302, 1341, 1344, 1362].

2. Rate Set 46 of Appendix B is revised and Rate Set 47 of Appendix B is added to read as follows:

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity " G_y " for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1 , k_2 , k_3 , n_1 and n_2 are defined in § 2619.45.

repermitting of certain surface coal mining operations. When OSM announced receipt of the amendment (49 FR 3879-3882), it also solicited public comment on certain proposed conditions that it was considering to impose on the approval of the amendment.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the modifications to the Kentucky program meet the requirements of SMCRA and the Federal permanent program regulations. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky program are being amended to implement these actions.

EFFECTIVE DATE: The approval of the program amendment is effective April 13, 1984.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

The Kentucky program was conditionally approved by the Secretary

of the Interior on May 18, 1982 (47 FR 21404-21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 Federal Register notice.

One of the initial deficiencies cited by the Secretary in his conditional approval of the Kentucky program relates to the amendment submitted by Kentucky on January 10, 1984, and to Kentucky's plan for transition to primacy that was submitted as part of the State regulatory program. This plan pertains to Kentucky's procedures for receiving and processing transition permits in lieu of the two month/eight month deadlines established in section 502(d) of SMCRA. The secretary recognized in conditionally approving the Kentucky program that Kentucky has a unique repermitting situation in that a large number of applications were expected for processing which would preclude the meeting of the eighth month deadline for reviewing such applications. The Secretary found that Kentucky's initial proposal did not adequately demonstrate that the receipt and review of complete applications would not be pushed forward indefinitely because of work on new applications and therefore, imposed condition (1) on the approval of the program.

Condition (1) required Kentucky to submit a plan which included: (1) A process for prompt completeness determinations on full applications from existing operators expecting to continue mining past the eighth month of primacy; (2) assurances that operators who have not submitted complete applications by eight months after primacy will be immediately advised that they may not continue mining until a permit is approved; and (3) a policy that applications for new operations will not be given priority for processing over applications for existing operations which are continuing under interim program permits when such existing mine applications are one year old or older. Kentucky submitted material (KY-417 and KY-475) to satisfy condition (1) and the Secretary found that these materials taken together satisfied condition (1). In these documents, the State proposed a process for prompt completeness determinations for transitioning applications and provided assurances that operators who had not submitted a complete application within eight months after

primacy would be able to continue mining until a permit is issued. The policy also provided that repermitting applications still backlogged as of January 18, 1984, would become the first priority of review with new permit applications taking a second priority. A complete discussion of the amendment approved to satisfy condition (1) can be found in the May 13, 1983 Federal Register (47 FR 21575).

II. Submission of Program Amendment and Proposed Findings

A. Program Amendment

Due to OSM's continuing concern about the backlog of transitioning permits for processing, and as a result of a meeting on January 9, 1984, Kentucky submitted to OSM in a letter dated January 10, 1984 pursuant to 30 CFR 732.17, a revision to its approved program pertaining to the unique repermitting schedule approved to satisfy condition (1).

In the amendment, Kentucky proposed to amend its repermitting schedule by substituting the following deadlines for similar goals approved on May 13, 1983.

1. The Natural Resources and Environmental Protection Cabinet (Cabinet) would make final technical decisions on 270 transitioning applications per month beginning January 19, 1984, with completion of the entire repermitting effort by September 15, 1984;
2. The Cabinet would establish a policy through an Order of the Secretary, effective March 16, 1984, to implement the applicable permanent program performance standards for all transitioning permits;
3. The Cabinet would advise Office of Surface Mining officials every two weeks of progress made in the review of transitioning applications;
4. The Cabinet would review staffing levels and make adjustments as necessary to ensure effective program implementation;
5. The Cabinet would continue to process new applications.

The Director announced receipt of Kentucky's program amendment in the Federal Register dated January 31, 1984 (49 FR 3879). In this announcement, the Director solicited public comment on the amendment and scheduled a public hearing on February 27, 1984. No one requested to comment at the hearing; therefore, the hearing was not held. Written public comments were received and are addressed in Part IV of this notice.

B. Proposed Findings and Proposed Action

When the Director announced receipt of Kentucky's proposed amendment, he also requested comment on certain proposed conditions on the possible approval of the amendment. These proposed actions follow.

1. *Conditional Approval of Proposed Amendment.* OSM proposed to approve Kentucky's January 10, 1984 amendment for transitional permits (49 FR 3879) subject to the following conditions:

- (a) That item 2 of the Kentucky proposal be construed to mean that Kentucky require, effective March 16, 1984, that all operations in Kentucky operating under interim program permits be subject to applicable permanent program performance standards, and
- (b) That, if for any reason Kentucky cannot meet any part of items 1-4 of its proposed amendment, including item 3 as interpreted by proposed condition (a), that the processing of new permits must cease and permitting be limited to only transitioning permits until such time as the deficient condition(s) is satisfied.

OSM proposed further that failure to implement any part of items 1-4 of the proposed amendment or satisfy any proposed condition on the approval of the amendment could result in OSM initiating procedures under 30 CFR 733.12(b) to terminate approval.

2. *Proposed Federal Preemption.* Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), OSM also proposed to preempt and supersede KRS 350.090 and 405 KAR 8:010 E, section 16, pertaining to the requirement that Kentucky process new permit applications within 65 days if necessary to ensure compliance with the provisions of the amendment or any condition imposed on the approval of the amendment.

The specific wording of 405 KAR 8:010 E, section 16, proposed for preemption and supersession as it pertains to the processing of new permits is as follows:

(b) 1. Except as provided for in paragraph (c) of this subsection, a complete application submitted under Section 2(2) (a), (b), (d), and (e) shall be approved or denied within sixty-five (65) working days after the notice of completeness under Section 13(1), except that periods of temporary withdrawal under Section 13(2)(b) shall not be counted against the sixty-five (65) working day period available to the department.

2. Except as provided in paragraph (c) of this subsection, a complete application submitted under Section 2(2)(c) for a major revision as provided

in Section 20, shall be approved or denied within forty-five (45) working days after the notice of completeness under Section 13(1), except that periods of temporary withdrawal under Section 13(2)(b) shall not be counted against the forty-five (45) working days period available to the department.

3. A complete application submitted under Section 2(2)(c) for a minor revision as provided in Section 20, shall be approved or denied within fifteen (15) working days after the notice of completeness under Section 13(1), except that periods of temporary withdrawal under Section 13(2)(b) shall not be counted against the fifteen (15) working day period available to the department.

(c) In the event that the notice, hearing, and conference procedures as mandated by KRS Chapter 350 and this Title prevent a decision from being issued within the time period specified in paragraph (b) of this subsection, the department shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(d) Where an application submitted under Section 2(2)(f)2 also contains, within the proposed permit area, new lands which are not covered by a valid interim program permit, that application shall be processed under paragraph (a) of the subsection.

The specific wording of KRS 350.090(1) proposed for preemption and supersession as it pertains to the processing of new permits is as follows:

The permit application containing the required plans and other information as required shall be submitted to the department and, except for applications or renewals submitted in compliance with KRS 350.060(2), the department shall notify the applicant by certified mail, return receipt requested within sixty-five (65) working days after receipt of complete application if it is or is not acceptable. Provided, however, that in the event that applicable notice, hearing and conference procedures prevent a decision from being issued within the sixty-five (65) working day period, the department shall have additional reasonable time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

III. Director's Findings and Decision on Program Amendment

Finding 1

The Director finds that Kentucky's proposed amendment dated January 10, 1984, as described under Part II of this notice, accompanied by the January 9, 1984 meeting summary (KY 558), adequately meets the requirements of 30 CFR Part 732 and section 502 of SMCRA

regarding the time limits for receiving and processing permit applications for existing operations. The Director recognizes that Kentucky continues to have a unique situation in that a large number of transitioning applications were received for processing and that Kentucky had to modify certain interim repermitting goals due to a delay in the development of certain sediment pond design and compliance information which may have contributed to the current backlog of transition permits. Due to these facts and Kentucky's continued effort to reduce the number of backlogged permits the Director is approving the amendment.

With regard to conditions outlined in the Federal Register dated January 31, 1984 (48 FR 3879) upon which comment was requested, the Director finds that the first proposed condition interpreted item 2 of Kentucky's proposal pertaining to the policy that Kentucky proposed to develop to require that all operations operating under interim program permits be subject to permanent program performance standards effective March 16, 1984. Since the time OSM contemplated the condition, Kentucky implemented this proposed policy by developing and implementing an Order of the Secretary accompanied by Reclamation Advisory Memorandum (RAM) number 75 that requires effective March 16, 1984, that all existing transition operations that have a pending transition permit application comply with all applicable permanent performance standards. The RAM lists each permanent program performance standard and its applicability. The Secretary finds that Kentucky has developed the Secretarial Order and therefore, at this time, the condition as proposed is no longer relevant. OSM will monitor closely Kentucky's use of the Secretarial Order and accompanying RAM to ensure that the State enforces this requirement that existing operations mine under the applicable permanent program performance standards. If the Director finds that Kentucky for any reason does not enforce that all such operations operate under the applicable permanent program performance standards as specified in RAM 75 on or after March 16, 1984, action under 30 CFR Part 733 could be initiated.

The second proposed condition pertained to Kentucky's compliance with the program amendment requirements. The Director finds that it is not necessary to reiterate Kentucky's agreement and amendment provisions to ensure that Kentucky comply with such obligations. Kentucky's amendment does not address its agreement to cease the processing of new permits and limit

permitting activity to transitioning permits if Kentucky is unable to meet its revised schedule. However, Kentucky agreed, in the January 9, 1984 meeting (Meeting Summary dated January 13, 1984, KY 558), to cease processing and issuing new permit applications in the event the terms for the extension of time to process transition permits could not be met. The Director will amend Kentucky's program to include this agreement as well as the January 10, 1984 program amendment. The Director could act to initiate proceedings under 30 CFR Part 733 if the State is unable to meet the requirements of the program amendment or does not comply with any agreement specified in the January 9, 1984 meeting minutes.

Finding 2

The Director finds that Kentucky's current progress in meeting the obligations proposed in its amendment is acceptable and therefore will not adopt at this time, the proposed Federal preemption of Kentucky's 65-day rule for processing new permits. However, the Director is not rejecting the preemption proposal but is deferring implementation of the proposal. The Director will implement the action only if Kentucky is unable to meet any obligation imposed by the approval of its January 10, 1984 program amendment. At this time, the Director finds that the State's provisions, which require the processing of new permits within 65 days, is not in conflict with the provisions of the program amendment.

IV. Public Comment

1. The Kentucky Coal Association (KCA) commented on OSM's proposal to preempt the 65-day review period for new permits. KCA feels the preemption proposal is cavalier and "smacks" of something akin to negotiations in bad faith with Kentucky. KCA further comments that Kentucky has the ability to stop the 65-day clock on new permits without the proposed intrusion by OSM.

The Director disagrees with commenter's concept of the intention of OSM's preemption proposal. When the Secretary approved Kentucky's permanent regulatory program on May 18, 1982, he did so by conditioning "Kentucky's Plan for Transition to Primacy" and required that Kentucky amend this plan by demonstrating that the receipt and review of transition permits would not be pushed forward indefinitely because of work on new permit applications. Kentucky amended its program by submitting a plan to assure that the repermitting process would be accomplished in a prompt

manner, that certain operators would not be allowed to mine past eight months after primacy and that new operations would not be given priority over transition permits. Kentucky assured the Secretary throughout the initial approval of its plan for transition to primacy, its amendment of that plan to remove condition (1) and during the course of time that Kentucky was implementing such plan that it would complete the repermitting process by January 18, 1984 as approved in the transition plan.

Kentucky was not able to complete the repermitting effort within the time period it proposed and approved by OSM. Due to OSM's continuing concern about the backlog of transitioning permits for processing, Kentucky submitted on January 10, 1984, a revised plan. This revised plan provided that Kentucky would act on 270 applications a month and finish repermitting of existing operations by September 15, 1984. Since the approval of the Kentucky program, such operators have continued to mine under interim performance standards well into the second year of State primacy. The Secretary, through the Director's announcement of the Kentucky amendment, proposed to preempt Kentucky's 65-day time period for processing new permits only if in the future the State is unable to follow its revised transition plan or to meet any obligations of Kentucky's plan. This preemption proposal is intended to reiterate the Secretary's position when he approved Kentucky's original transition plan.

Further, the Secretary approved the original plan based on the information Kentucky submitted in its regulatory program that the number of transitioning permits was predicted to be large (3500). The Secretary believed that Kentucky's plan providing that all transitioning permits be processed within 20 months (1-18-84) while processing only about 100 predicted new permits was reasonable. The Secretary stated clearly his concern that the processing of new permits should not preclude processing of transition applications.

Kentucky was required to act on 2568 actual transition permits. Out of these applications, Kentucky approved 268, completed technical review on 213 and determined that 16 were no longer in operation for a total of 497 actions, within the approved 20-month time period to complete the process. During this same 20-month period, Kentucky reviewed numerous new permit applications, amendments to permits and approved 2-acre exemption permits. Due to these facts, the Director believes

that the proposed preemption is a prudent step to ensure that the repermitting process is not stalled indefinitely while new applications are processed and at the same time allow the State the additional time required to fulfill its obligations under SMCRA.

As stated in Finding 2, action on the preemption proposal has been deferred and will be implemented only if Kentucky is unable to meet any obligations imposed by the approval of its January 10, 1984 program amendment.

2. The Appalachian Research and Defense Fund of Kentucky, Inc. (ARDFK) comments that it advocates withholding a decision on the Federal preemption of Kentucky's 65-day rule for processing new permit applications if Kentucky adheres strictly to its proposed schedule of final processing of 270 transition applications per month and completion of the transition permit process by September 15, 1984. The Director is deferring implementation of the preemption proposal because Kentucky's progress in meeting the provisions of the amendment is acceptable. However, if Kentucky is unable to meet any obligation imposed by the approval of the amendment, the Director will implement the preemption proposal if he finds that the State's provision to process new permits is in conflict with the amendment provisions. (See Finding 2.)

This commenter also feels that Kentucky's proposal to bring all existing operations under applicable permanent program performance standards effective March 16, 1984, needs to be clarified. The Director finds that Kentucky has clarified its proposal by its implementation of the proposed Secretarial Order and the development of RAM #75. (See Finding 1.) These actions define "applicable performance standards," and the Director believes that these documents clearly and adequately expound on Kentucky's proposal. RAM #75 lists all permanent program performance standards and their applicability to the transition permits. OSM will monitor closely Kentucky's implementation of this Order and accompanying RAM and will take the necessary steps of RAM # 75 to rectify any discrepancies in the implementation.

ARDFK also expressed its concern that OSM not allow the repermitting process to continue indefinitely. The Director shares this concern and will monitor Kentucky's progress and act quickly to correct any unnecessary delay.

V. Approval of Amendment

Accordingly, the amendment to "Kentucky's Plan for Transition to Primacy" submitted to OSM on January 10, 1984 is approved pursuant to 30 CFR 732.17.

The Federal regulations at 30 CFR 917.15 codifying the Director's decision on matters pertaining to Kentucky are being amended to indicate approval of the program amendment.

VI. Additional Findings

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 9, 1984.

J. Lisle Reed,
Acting Director, Office of Surface Mining.

PART 917—KENTUCKY

1. Section 917.15 of 30 CFR is amended by adding paragraph (g).

§ 917.15 Approval of amendments to State Regulatory Program.

(g) The following amendments are approved effective on April 13, 1984: Revisions submitted on January 10, 1984 to "Kentucky's Plan for Transition to Primacy" as modified and clarified by

Meeting Minutes of January 9, 1984, signed by the Secretary of the Kentucky Natural Resources and Environmental Cabinet and OSM Lexington Field Office Director on January 13, 1984.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 84-10028 Filed 4-12-84; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 935

Surface Coal Mining and Reclamation Operations on Federal Lands Under the Permanent Program; State-Federal Cooperative Agreements; Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This final rule completes the administrative process for the adoption of a cooperative agreement between the Department of the Interior and the State of Ohio for the regulation of surface coal mining and reclamation operations on most Federal lands in Ohio except those containing leased Federal coal. Such a cooperative agreement is provided for by section 523(c) of the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: April 13, 1984.

ADDRESSES: Copies of the request by the State of Ohio for the permanent program cooperative agreement, related information required under 30 CFR Part 745, and the administrative record of this rulemaking are available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., excluding holidays, at the following address: Administrative Record, Office of Surface Mining, Room 5315, 1100 L Street, NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, South Interior Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Phone: (202) 343-5866.

SUPPLEMENTARY INFORMATION: This notice is divided into five parts in order to assist understanding of the process by which the Secretary of the Interior (Secretary) decided to enter into a permanent program cooperative agreement with the Governor of the State of Ohio:

- I. Background
- II. Director's Findings
- III. Approval of the Cooperative Agreement
- IV. Summary of the Cooperative Agreement
- V. Procedural Matters

I. Background

A. The State of Ohio's Request

The purpose of this final rule is to adopt a permanent program cooperative agreement between the Department of the Interior and the State of Ohio which gives Ohio primacy in the administration of its approved permanent regulatory program on Forest Service lands in Ohio except those containing leased Federal coal. The State of Ohio requested the cooperative agreement on March 26, 1982. Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1201 *et seq.*, allows for the State and the Secretary to enter into a permanent program cooperative agreement if the State has, as Ohio does, an approved State program for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands. See 30 CFR Part 935, 47 FR 34688 (August 10, 1982).

Permanent program cooperative agreements are authorized by the first sentence of section 523(c) which provides that "[a]ny State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provisions of this Act." 30 U.S.C. 1273(c) (emphasis added).

The regulatory requirements for States to elect to enter into permanent program cooperative agreements are found in 30 CFR Part 745. (48 FR 6912, February 16, 1983). Sections 745.11 (b) and (f) require that certain information relating to a State's ability to administer a cooperative agreement be submitted with a request for such an agreement except to the extent that the information has previously been included in the State program. Ohio satisfied the requirements of 30 CFR 745.11(f)(1) when it obtained approval of its State program on August 10, 1982 (47 FR 34688). The information required in 30 CFR 745.11 (b)(1) and (f)(2) was included in Ohio's request for approval of its State program and in subsequent requests for administrative and enforcement funding under 30 CFR Part 735. The information relating to Ohio's authority to enter into the cooperative agreement was provided in a letter from the Ohio Assistant Attorney General dated August 5, 1983, in which the Assistant Attorney General stated that there exists no statutory, regulatory, or

legal constraints within the State of Ohio which would preclude the Ohio regulatory authority from carrying out the provisions of the agreement.

B. Federal Rulemaking

On September 7, 1983, the Office of Surface Mining (OSM) published a notice of proposed rulemaking and public hearing (48 FR 40396) concerning the proposed cooperative agreement. A public hearing was scheduled to receive testimony on the proposed rule. However, as provided in the notice, the hearing was cancelled because no one expressed an interest in testifying at the hearing by the date specified. No written comments were received during the public comment period.

II. Director's Findings

Under 30 CFR 745.11(f), the Director of OSM must make the following three findings before recommending to the Secretary that the Department of the Interior enter into a cooperative agreement with a State.

Finding No. 1: The Director finds that the State of Ohio has a State program which was conditionally approved and became effective upon publication in the Federal Register on August 10, 1982 (47 FR 34688).

Finding No. 2: The Director finds that the State regulatory authority has sufficient budget, equipment and personnel to enforce the State's statutes and regulations fully for the regulation of surface coal mining and reclamation operations on Federal lands covered by the cooperative agreement in Ohio. The Director makes this finding based on information obtained through oversight of the Ohio State program and in the processing of grants to the State of Ohio.

Finding No. 3: The Director finds that the State of Ohio has the legal authority to administer the cooperative agreement. This finding is made based on the written certification of the Assistant Attorney General of Ohio and on the conditional approval of the State's permanent regulatory program.

III. Approval of the Cooperative Agreement

Based upon the conditional approval of the Ohio State Program, the administrative record of this rulemaking, written comments, and the findings and recommendations of the Director, the Secretary decided to approve a permanent program cooperative agreement for the State of Ohio. The cooperative agreement was signed on February 22, 1984, by the Secretary of the Interior and on April 3, 1984, by the Governor of the State of Ohio. By its

terms, the agreement becomes effective upon publication as a final rule in the *Federal Register*.

IV. Summary of the Cooperative Agreement

Each Article of the agreement is summarized below. Unless indicated otherwise, the text is the same as that in the proposed rule except for minor editorial changes.

Article I: Introduction, Purpose, and Responsible Administrative Agency

Article I sets forth the legal authority for the cooperative agreement which is contained in section 523(c) of the Act. The purposes of the agreement and designation of the responsible administrative agency of the Department and of the State are also included in Article I. This article also includes a provision clarifying the separate role of the Forest Service in regulating mining operations since the only Federal lands covered by this agreement are those under the jurisdiction of the Forest Service. Any mining operations on Forest Service lands are subject to regulation by that agency with respect to laws and regulations for which the Forest Service is responsible. This agreement does not apply to Forest Service lands containing leased Federal coal.

Article II: Effective Date

Article II provides that the cooperative agreement is effective after it has been signed by the Secretary and the Governor, and upon publication as a final rule in the *Federal Register*. It remains in effect until terminated as provided in Article V.B. or X.

Article III: Definitions

Article III provides that any terms and phrases used in the agreement be given the same meanings as set forth in the Act, regulations promulgated pursuant to the Act under 30 CFR Parts 700, 701, and 740, and the approved State program. Defining terms and phrases in this manner ensures consistency between applicable regulations and the agreement. Where there are conflicts in definitions, those included in the approved State program apply, provided there are no conflicts with responsibilities of the Secretary that cannot be assumed by the State.

Article IV: Applicability

Article IV states that the laws, rules, terms, and conditions of Ohio's approved State program are applicable to surface coal mining and reclamation operations on Federal lands in Ohio except as otherwise stated in the

cooperative agreement, the Act, 30 CFR 745.13, or other applicable laws or regulations. This provision is consistent with the Federal lands program which made the Ohio State program applicable to the regulation of surface coal mining and reclamation operations on the Federal lands covered under this agreement in Ohio. See 30 CFR 740.11(a), 48 FR 6936 (February 16, 1983). The reference to the Ohio State Program is intended to encompass the conditional approval of that State program as approved on August 10, 1982 as well as any amendments thereto which are approved in accordance with 30 CFR 732.17. Because the State does not wish to assume responsibility for regulating surface coal mining and reclamation operations on Federal lands other than Forest Service land, this agreement applies only to Forest Service lands. The responsibility for the regulation of surface coal mining and reclamation operations on Forest Service lands containing leased Federal coal is also excluded from this agreement as well as responsibilities reserved to the Secretary pursuant to the Act and 30 CFR 745.13.

Article V: General Requirements

Article V mutually binds the Governor and the Secretary to the provisions of the cooperative agreement and the conditions and requirements contained in Article V. Paragraph A of Article V requires that the Division of Reclamation of Ohio's Department of Natural Resources (the agency designated by the Governor to administer the agreement) continue to have authority under State law to carry out this cooperative agreement.

Paragraph B of Article V provides that, upon application for funds, the State may be reimbursed pursuant to section 705(c) of the Act if the cooperative agreement has been implemented and if necessary funds have been appropriated to OSM by Congress. Section 705(c) of the Act provides that a State with a cooperative agreement may receive an increase in its annual grant for the development, administration and enforcement of a State program of Federal lands by an amount which the Secretary determines is approximately equal to the amount the Federal government would have expended to regulate surface coal mining and reclamation operations on the Federal lands within the State. See 30 U.S.C. 1295(c). The reference in section 705(c) to section 523(d) is obviously a typographical error. The correct reference is section 523(c). The regulations implementing section 705(c) appear at 30 CFR 735.16 through 735.26.

If adequate funds have not been appropriated, OSM and the Division will meet promptly to decide on appropriate measures to insure that surface coal mining and reclamation operations are regulated in accordance with the approved State program. Any funds granted to the State pursuant to the cooperative agreement would be reduced by the amount of any fees collected by the State that are attributable to the Federal lands covered by the agreement in accordance with the Office of Management and Budget (OMB) Circular A-102 (Uniform Requirements for Assistance to State and Local Governments), Attachment E (Program Income).

Paragraph C of Article V requires the State to make annual reports to OSM with respect to compliance with this agreement.

Paragraph C also provides for a general exchange of information developed under the agreement, unless such an exchange is prohibited by Federal law.

Paragraph D of Article V requires the Division to maintain the necessary personnel to implement this agreement fully.

Paragraph E of Article V requires that the Division avail itself of the facilities necessary to carry out the requirements of the agreement. This provision ensures that the State has access to and will utilize any resources necessary to conduct inspections, investigations, studies, tests, and analyses required to fulfill the requirements of this agreement.

Article VI: Review of a Permit Application Package

Paragraphs A through G of Article VI describe the procedures to be followed in the review and analysis of permit application packages on Forest Service lands. The proposed cooperative agreement identifies the Division as having the primary responsibility for the analysis, review, and approval or disapproval of the permit application package on Federal lands covered by this agreement. In assuming primary responsibility for review, analysis, and approval or disapproval of permit applications, the Division is also responsible for coordinating the review of a permit application package with the Forest Service and other Federal agencies which may be affected by the proposed surface coal mining and reclamation operations to ensure compliance with Federal laws other than the Act and regulations other than those implementing SMCRA. If requested by the State, OSM will assist in identifying Federal agencies which

may be affected by the proposed mining operation.

Under Paragraph A, the Division will require an operator on Federal lands to submit a permit application package in an appropriate number of copies to the Division. The term "permit application package" as used in the cooperative agreement beginning in this article, is a new term adopted by OSM in revising the Federal lands program (48 FR 6912, February 16, 1983). It appropriately describes the material submitted by an applicant proposing to mine on Federal lands and includes materials submitted with applications for permit revisions and renewals.

OSM adopted the term because there are requirements for mining on Federal lands that are in addition to those required by a permit application under the approved State program for non-Federal lands. For example, operations on Federal lands may be subject to requirements of the Federal land management agency (under this agreement, the Forest Service) under Federal laws other than the Act. The package concept allows for such information to be included with the permit application required by the approved State program. See the definition of "permit application package" under 30 CFR 740.5, 48 FR 6936 (February 16, 1983).

At a minimum, the permit application package must include the information necessary for the Division to make a determination of compliance with the approved State program and for the Forest Service and OSM to make determinations of compliance with non-delegable requirements of the Act, Federal laws other than the Act, and regulations for which they are responsible.

Paragraph B requires the Division to provide copies of the complete permit application package to the Forest Service and to other Federal agencies affected by the surface coal mining and reclamation operation. Providing copies of the permit application package to the Forest Service and other Federal agencies affected by the mining proposal allows those agencies an opportunity to review the permit application package for compliance with requirements of laws and regulations for which they are responsible. For example, the Division must provide the Forest Service the opportunity to determine whether mining operations occur in a manner that is consistent with competing uses of the forest and whether reclamation is consistent with post-mining land uses. If requested by the State, OSM will assist in identifying other Federal agencies which may be

affected by the mining proposal. Further, copies of all or portions of the permit application package are required to be submitted to OSM so that OSM, in consultation with the Forest Service, can determine under Section 522(e) of the Act, whether any proposed operations are prohibited or limited because they may be in an area designated by Congress as unsuitable for mining. In addition, to the extent the Federal lands review specified in Section 522(b) of the Act is incomplete, the Secretary will make any necessary determinations, such as determining whether reclamation is technologically and economically feasible.

Paragraph C limits routine OSM contact with the applicant regarding the review of a permit application package. Any matters which may be of concern to OSM during the review process will normally be channeled to the operator through the State. OSM may, however, act independently of the State (including contact with the operator) to carry out non-delegable responsibilities under the Act or Federal laws other than the Act.

Under paragraph D the Division is required to maintain a file of all original correspondence with an applicant and any other information received which may have a bearing on decisions regarding a mining proposal. When requested by OSM or the Forest Service, the Division is required to provide copies of this information to OSM or the Forest Service for their review. OSM must have access to this information in order to carry out an effective oversight program, while the Forest Service needs the information to ensure compliance with Federal laws and regulations within its area of responsibility.

Paragraph E provides that the Division may approve a permit application or an application for permit revision or renewal and issue a permit after consultation with the Forest Service and after making a finding of compliance with the State program and other applicable laws. Paragraph E further provides that the permit shall condition the initiation of surface coal mining and reclamation operations on compliance with the requirements of the approved State program and, as applicable, requirements of OSM or the Forest Service under Federal laws other than the Act and regulations other than the approved State program. Paragraph E also requires the Division to send a notice of the action on the permit application package promptly to OSM and the Forest Service.

Article VII: Inspections

Article VII specifies that the Division must conduct inspections on Forest

Service lands covered by this agreement and prepare and file inspection reports in accordance with the approved State program. Paragraph A requires that the report be filed with OSM within 15 days of the inspection.

Administrative provisions of paragraph B include designation of the Division as the primary point of contact with the operator. However, paragraphs B and C preserve the right of OSM to conduct inspections of surface coal mining and reclamation operations on Federal lands without prior notice to the Division for the purposes of evaluating the manner in which the cooperative agreement is being carried out and insuring that performance and reclamation standards are being met.

The right of Federal and State agencies to conduct inspections for purposes outside the scope of the cooperative agreement is not affected. In particular, this article preserves OSM's obligation and authority to conduct inspections pursuant to 30 CFR Part 842.

Paragraph D provides that personnel of the State and OSM be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VIII: Enforcement

Article VIII sets forth the enforcement obligations and authorities of OSM and the Division. Under paragraph A the Division has primary enforcement authority on Federal lands in Ohio in accordance with the requirements of the cooperative agreement and the approved State program.

Under paragraph B the Division is required to notify the Forest Service of violations of applicable laws, regulations, orders, and approved permits for surface coal mining and reclamation operations on those Federal lands covered under this agreement.

Paragraph C continues the Secretary's obligation to enforce violations of Federal law other than the Act and preserves OSM's authority to take enforcement action to comply with Parts 843 and 845. Any such action will be based upon non-compliance with the Act or the applicable substantive provisions contained in the approved State program. However, OSM will use the Federal procedures and penalty system contained in 30 CFR Parts 843 and 845.

Article IX: Bonds

Under paragraph A the Division is required to have each operator on Federal lands covered by this agreement submit a single performance bond to meet Federal and State requirements.

The bond must be payable to the State and the United States. The Division is required to obtain the concurrence of the Forest Service prior to releasing an operator from any obligations covered by the performance bond. If the cooperative agreement is terminated, paragraph A requires that the bond revert to being payable solely to the United States to the extent that Federal lands are involved in the permit area and that the Division deliver the bond to OSM if only Federal lands are covered by the bond.

Paragraph B obligates the State of Ohio to use funds from its Reclamation Forfeiture Special Account to complete reclamation of any surface coal mining and reclamation operation on Federal land in accordance with the approved State program and permit where there is a forfeiture of the performance bond and where the cost of reclamation exceeds the bond amount. This provision is included because the approved State program requires that an operator submit a bond which, in some cases, does not cover the full cost of reclamation. When a forfeiture occurs, the State supplements the operator's bond with funds from the Ohio Reclamation Forfeiture Special Account to assure that reclamation is accomplished in accordance with the State program and permit.

Article X: Termination of Cooperative Agreement

Article X specifies that this cooperative agreement may be terminated by the Governor or Secretary as specified under 30 CFR 745.15.

Article XI: Reinstatement of Cooperative Agreement

Article XI provides that, if terminated, the cooperative agreement may be reinstated under 30 CFR 745.16. That provision allows for reinstatement of the cooperative agreement upon application by the Division after remedying the defects for which the agreement was terminated and the submission of evidence to the Secretary that the Division can and will comply with all of the provisions of the agreement.

Article XII: Amendment of Cooperative Agreement

Article XII provides that the cooperative agreement may be amended by mutual agreement of the Governor and Secretary in accordance with 30 CFR 745.14.

Article XIII: Changes in State or Federal Standards

Paragraph A of Article XIII recognizes that the Secretary or the State may

promulgate new or revised performance or reclamation requirements, or enforcement and administration procedures. If any changes are made, OSM and the Division will immediately inform each other of the changes and of the effect such changes may have on the cooperative agreement. If it is determined to be necessary to keep the agreement in force, the State will request necessary legislative action and either the State or OSM will revise its regulations or promulgate new regulations, as applicable. Such changes will be made in accordance with 30 CFR Part 732 for changes to the approved State program and sections 501 and 523 of the Act for changes to the permanent regulatory program and to the Federal lands program.

Paragraph B requires the State and OSM to provide each other with copies of changes in their respective laws and regulations.

Article XIV: Changes in Personnel and Organization

Article XIV requires the State and the Department to advise each other of substantial changes in statutes, regulations, funding, staff, or other changes which could affect administration or enforcement of the cooperative agreement.

Article XV: Reservation of Rights

Article XV recognizes those authorities which the Secretary is prohibited from delegating to the State. Article XV states that this agreement does not delegate nor shall it be construed to delegate any authority that the Secretary has retained under 30 CFR 745.13, laws other than the Act, or regulations promulgated thereto.

V. Procedural Matters.

1. E.O. 12291 and Regulatory Flexibility Act

In a "Determination of Significance" document prepared on December 31, 1979, and approved by the Assistant Secretary, Energy and Minerals, on January 7, 1980, the Department determined that the "promulgation of proposed or final rules for entering into a cooperative agreement with a State pursuant to 30 U.S.C. 1273 for State regulation of surface coal mining and reclamation operations on Federal lands was not a significant action and will not require a regulatory analysis." A copy of this determination was filed with the Department's Office of Policy and Analysis and the Division of General Law in accordance with Departmental procedures.

The Department has reviewed this determination in light of Executive Order 12291, February 17, 1981; the Regulatory Flexibility Act (Pub. L. 96-354); and the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Having conducted this review, the Department has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. The document will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 605(b). This determination was made by the Director, OSM and approved by the Assistant Secretary, Energy and Minerals. A copy is on file in the OSM Administrative Record Room, Room 5315, 1100 L Street, NW, Washington, D.C. 20005.

2. Recordkeeping and Reporting Requirements

There are recordkeeping and reporting requirements in the proposed rules which are the same as and required by the permanent program regulations. Those regulations required clearance from the Office of Management and Budget under 44 U.S.C. 3507 and were assigned the following clearance numbers:

Location of requirement	OMB clearance
Article VI. A. (Required by 30 CFR Part 740)	1029-0041
Article VII. A. (Required by 30 CFR Part 840)	1029-0051
Article IX. A. (Required by 30 CFR Part 800)	1029-0043

3. National Environmental Policy Act

Proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are, therefore, exempt under section 702(d) of the Act from the requirements to prepare a detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Indexing Requirements

List of Subjects in 30 CFR Part 935

Coal Mining, Intergovernmental relations, Surface mining, Underground Mining.

For the reasons set forth herein, 30 CFR Part 935 is amended as follows:

Dated: April 11, 1984.

Garrey E. Carruthers,
Assistant Secretary for Land and Minerals
Management.

PART 935—[AMENDED]

1. Section 935.30 is added to read as follows:

§ 935.30 State-Federal Cooperative Agreement.

Cooperative Agreement

The Governor of the State of Ohio, acting through the Department of Natural Resources, Division of Reclamation (Division), and the Secretary of the Department of the Interior, acting through the Office of Surface Mining (OSM), enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purpose, and Responsible Administrative Agency

A. *Authority:* This agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement with the Secretary of the Department of the Interior for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands in Ohio which are under the jurisdiction of the United States Department of Agriculture, Forest Service, except those lands containing leased Federal coal, consistent with State and Federal laws governing such activities in Ohio, the Federal lands program (30 CFR Parts 740-745) and the Ohio State program (approved State program).

B. *Purpose:* The purpose of this Agreement is to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniform and effective application of the approved State program on all lands in Ohio, except those containing leased Federal coal, in accordance with the Act, the approved State program, and this Agreement.

C. *Responsible Administrative Agencies:* The Division shall be responsible for administering this Agreement on behalf of the Governor. The Assistant Secretary, Land and Minerals Management, acting through OSM, shall administer this Agreement on behalf of the Secretary in accordance with the regulations in 30 CFR Chapter VII. The Federal lands in Ohio covered by this Agreement are only those under the jurisdiction of the United States Department of Agriculture, Forest Service (Forest Service) and include all or parts of the Wayne National Forest. It is understood by both parties that the Forest Service will continue to be involved in mining operations on its respective lands pursuant to its laws,

regulations, agreements and restrictions. These requirements are in addition to the requirements discussed in this Agreement.

Article II: Effective Date

After it has been signed by the Secretary and the Governor, this Agreement shall be effective upon publication in the *Federal Register* as a final rule. This Agreement shall remain in effect until terminated as provided in Article V.B. or X.

Article III: Definitions

Any terms and phrases used in this Agreement which are defined in the Act, 30 CFR Parts 700, 701, and 740, or the approved State program shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State program will apply, except in the case of a term or phrase which defines the Secretary's non-delegable responsibilities under the Act and other laws.

Article IV: Applicability

In accordance with the Federal lands program in 30 CFR Parts 740-745, the laws, regulations, terms and conditions of the approved State program (conditionally approved on August 10, 1982, 30 CFR Part 935, or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to surface coal mining and reclamation operations on Federal lands in Ohio except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws or regulations.

This Agreement does not apply to surface coal mining and reclamation operations on lands containing leased Federal coal. This Agreement applies only to lands under the jurisdiction of the Forest Service.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Authority of State Agency:* The Division has and shall continue to have the authority under State law to carry out this Agreement.

B. *Funds:* Upon application by the Division and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR Part 735. If the State requests funds and sufficient funds have not been appropriated to OSM, OSM and the Division shall meet promptly to decide on appropriate measures that will ensure that surface coal mining and reclamation operations are regulated in accordance with the approved State program. If agreement cannot be reached, then either party may terminate the Agreement. Funds provided to the State under this Agreement shall be reduced; in proportion to the amount of fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. *Reports and Records:* The Division shall make annual reports to OSM on the results of the Division's implementation and

administration of this Agreement, pursuant to 30 CFR 745.12(d). Upon request, the Division and OSM shall exchange information developed under this Agreement, except where prohibited by Federal law. OSM shall provide the Division with a copy of any final evaluation report prepared concerning the Division's administration and enforcement of this Agreement.

D. *Personnel:* The Division shall have the necessary personnel to implement this Agreement fully in accordance with the provisions of the Act and the approved State program.

E. *Equipment and Laboratories:* The Division will assure itself access to facilities which are necessary to carry out the requirements of the Agreement.

Article VI: Review of a Permit Application Package

The Division shall assume the primary responsibility for the review of permit application packages for surface coal mining and reclamation operations on Forest Service lands covered by this Agreement. The Division shall coordinate the review of permit application packages with the Forest Service and other Federal agencies which may be affected by the proposed surface coal mining and reclamation operation to ensure compliance with Federal laws other than the Act and regulations other than the approved State program. When requested by the State, OSM shall assist the State in identifying Federal agencies other than the Forest Service which may be affected by the mining proposal.

A. *Submission of Permit Application Package:* The Division shall require an operator proposing to mine on Forest Service lands to submit a permit application package in an appropriate number of copies to the Division. The permit application package shall be in the format required by the Division and include any supplemental information (as specified by OSM or the Forest Service) needed to satisfy the requirements of non-delegable requirements of the Act, Federal laws other than the Act, and regulations other than the approved State program.

B. *Coordination With Affected Agencies:* Upon receipt, the Division shall transmit a copy of the complete permit application package to the Forest Service and to other Federal agencies affected by the proposed surface coal mining and reclamation operation with a request for review pursuant to 30 CFR 740.13(c)(4). OSM shall determine whether or not a proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of section 522(e) of the Act (30 U.S.C. 1272(e)) and 30 CFR Parts 760-762 with respect to Federal areas designated by Congress as unsuitable for mining and shall make any necessary determinations under section 522(b) of the Act. The Division shall obtain, in a timely manner, the comments of the Forest Service and other Federal agencies affected by the mining proposal.

C. *Contact With the Applicant:* As a matter of practice, OSM will not independently initiate contacts with the applicant regarding permit application packages. However, OSM

reserves the right to act independently of the Division to carry out any non-delegable responsibilities under the Act, or under other Federal laws and regulations, provided, however, that OSM shall inform the Division of the necessity of such action taken and send copies of all relevant correspondence to the Division.

D. File and Records: The Division shall maintain a title of all original correspondence with the applicant and any information received which may have a bearing on decisions regarding surface coal mining and reclamation operations on Forest Service lands. Upon request, the Division shall provide, for OSM or Forest Service review, copies of any titles and records for surface coal mining and reclamation operations on Forest Service lands.

E. Permit Application Decision and Permit Issuance: After consultation with the Forest Service and after making a finding of compliance with the approved State program and other applicable requirements, the Division may approve a permit application or application for permit revision or renewal and issue a permit. The permit issued by the Division shall condition the initiation of surface coal mining and reclamation operations on compliance with the requirements of the approved State program and, as applicable, requirements of OSM or the Forest Service pursuant to Federal laws other than the Act and regulations other than the approved State program. After the Division issues its decision on the permit application, it shall promptly send a notice of the action to OSM and to the Forest Service.

Article VII: Inspections

The Division shall conduct inspections on Forest Service lands covered by this Agreement and prepare and file inspection reports in accordance with the approved State program.

A. Inspection Reports: The Division shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with the applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. Division Authority: The Division shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. OSM Authority: For the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands, without prior notice to the Division. In order to facilitate a joint Federal-State inspection, when OSM is responding to a citizen complaint of an

imminent danger to the health or safety of the public or of a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact the Division, if circumstances and time permit, prior to the Federal inspection. OSM may conduct any inspections necessary to comply with 30 CFR Part 842. If an inspection is made without Division inspectors, OSM shall provide the Division with a copy of the inspection report within 10 days after inspection.

D. Witness Availability: Personnel of the State and OSM shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VIII: Enforcement

A. Division Enforcement: The Division shall have primary enforcement authority on Federal lands covered by this Agreement in accordance with the approved State program and this Agreement. During any joint inspection by OSM and the Division, the Division shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation.

B. Notification: The Division shall promptly notify the Forest Service of all violations of applicable laws, regulations, orders, and approved permits for surface coal mining and reclamation operations on lands administered by the Forest Service.

C. Secretary's Authority: (1) This Agreement does not affect or limit the Secretary's authority to enforce violations of laws other than the Act. (2) During an inspection made solely by OSM or any joint inspection where the Division and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement action shall be based on the Act or the applicable substantive provisions included in the regulations of the approved State program and shall be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

Article IX: Bonds

A. Performance Bond: The Division shall require all operators on Federal lands covered by this Agreement to submit a performance bond to cover the operator's responsibilities under the Federal Act and the approved State program, payable to both the United States and Ohio. The performance bond shall be of sufficient amount to comply with the requirements of the approved State program and any other conditions of the permit. Release of the performance bond shall be conditioned upon compliance with all applicable requirements. The Division shall obtain the concurrence of the Forest Service prior to releasing the operator from any obligation under the performance bond. If this Agreement is terminated, (1) the bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by the Division to OSM if only Federal lands are covered by the bond.

B. Forfeiture: In the event of forfeiture by an operator of the performance bond for surface coal mining and reclamation

operations on Federal lands covered by this Agreement, the State shall use funds received from bond forfeiture and, where necessary, funds from the Ohio Reclamation Forfeiture Special Account (pursuant to Section 1513.18 of the Ohio Revised Code) to ensure that reclamation is accomplished in accordance with the approved State program and the approved permit.

Article X: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XI: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIII: Changes in State or Federal Standards

A. Effect of Changes: The Secretary or the State may promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and the Division shall immediately inform each other of any final changes and of any effect such changes may have on the cooperative agreement. If it is determined to be necessary to keep this Agreement in force, the Division shall request necessary State legislative action and each party shall revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the approved State program and sections 501 and 523 of the Federal Act for changes to the Federal lands program.

B. Copies of Changes: The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XIV: Changes in Personnel and Organization

The Division and the Secretary shall, consistent with 30 CFR Part 745, advise each other of substantial changes in statutes, regulations, funding, staff, or other changes which could affect the administration and enforcement of this Agreement.

Article XV: Reservation of Rights

This Agreement does not delegate nor shall it be construed to delegate any of the authority that the Secretary has retained under 30 CFR 745.13 or under other laws or regulations.

Approved:

Richard F. Celeste,
Governor of Ohio.

Dated: April 3, 1984.

William Clark,
Secretary of the Interior.

Dated February 22, 1984.

[FR Doc. 84-10009 Filed 4-12-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 835

Support of Nongovernmental Test and Evaluation

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its rule which gives policy, authority, and limitations on procedures for providing Air Force support, services and facilities to nongovernmental organizations. The rule is amended to include a clarification of the term "Government Sponsor," which has been redefined in order to eliminate confusion.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT:

Major Davis, HQ USAF/RDPT, Washington, D.C. 20330, telephone (202) 694-4590.

SUPPLEMENTARY INFORMATION: In order to eliminate possible confusion as to who is meant by "Government Sponsor," the Department of the Air Force has redefined the term.

List of Subjects in 32 CFR Part 835

Federal buildings and facilities, Research.

PART 835—[AMENDED]

Accordingly, 32 CFR Part 835 is amended as follows:

In § 835.4, paragraph (d) is revised to read as follows:

§ 835.4 Terms explained.

(d) *Government sponsor.* A Federal executive agency which has a direct or indirect interest in the requested tests and is willing to sponsor them.

...

(10 U.S.C. 8012)

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-9946 Filed 4-12-84; 8:45 am]

BILLING CODE 3910-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. 25; A-2-FRL 2551-2]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; New York Plan for Controlling Fluoride Emissions From Primary Aluminum Plants

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) is approving a New York plan for controlling fluoride emissions from existing primary aluminum plants. The plan substantially fulfills the requirements of Section 111(d) of the Clean Air Act, and regulations promulgated thereunder.

EFFECTIVE DATE: This action will be effective June 12, 1984, unless notice is received by May 14, 1984 that someone wishes to submit adverse or critical comments.

ADDRESSES: All comments should be addressed to: Jacqueline E. Schafer, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State's submittal are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278

New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: On July 25, 1983, the State of New York submitted to the Environmental Protection Agency (EPA) an adopted regulation, Part 209, "Primary Aluminum Reduction Plants," of Title 6 of the New York Code of Rules and Regulations (6 NYCRR). Part 209 was adopted by New York on July 21, 1983 and became effective on August 20, 1983. The State's submittal also included a Certificate of Adoption, a Notice of Agency Action and a document entitled "Potroom Emission Measurement Methodology as

used by Reynolds Metals Company St. Lawrence Reduction Plant, Massena, New York 13662" dated June 16, 1983. State public hearings were held on Part 209 on August 31, 1982 and September 1, 2, 7, and 9, 1982. The public hearings were announced in local newspapers throughout the State.

On September 2, 1983, the State submitted additional information needed to complete its "Section III(d) plan" submission. This information consisted of a computer printout listing all existing emission points at the two primary aluminum reduction plants located in New York.

EPA has evaluated the New York plan by comparing it with the requirements for state plans for designated facilities, as set forth in Subpart B of 40 CFR Part 60, Adoption and Submittal of State Plans for Designated Facilities, and with the EPA Emission Guideline document, Primary Aluminum: Guidelines for Control of Fluoride Emissions from Existing Primary Aluminum Plants (EPA-450/278-049b).

The provisions of Part 209 apply to all primary aluminum plants including those subject to New Source Performance Standards (NSPS). While the requirements in Part 209 for sources subject to NSPS appear consistent with 40 CFR Part 60, Subpart S—Standards of Performance for Primary Aluminum Reduction Plants, EPA notes that the Subpart S will apply in any instances in which Subpart S contains additional or more stringent requirements than Part 209.

For existing sources, Part 209 contains emission limitations in the same form as those in Subpart S. It limits emissions from Soderberg plants to 4.3 pounds of total fluorides per ton of aluminum produced and prebake plants to 4.2 pounds of total fluorides per ton of aluminum produced. Furnaces at anode bake plants are limited to 0.40 pounds per ton of aluminum equivalent. These limits are consistent with the Emission Guideline.

Part 209 also permits the use of facility-wide emission reduction plans for fluorides. Facility-wide emission reduction plans enable a plant to demonstrate compliance by over-control at some emission points and offsetting undercontrol at others so that the sum of all emissions equals that which would have been allowed if all emission limits were exactly met.

Part 209 also provides that in some cases test procedures for determining compliance with the emission limitations may be determined by the Commissioner of the New York State Department of Environmental

Conservation on a case-by-case basis taking into consideration the technical and the economic feasibility of determining compliance. Also, compliance with Part 209 is required by November 18, 1983; but the Commissioner may extend the compliance date if certain specific conditions are met.

In the July 25, 1983 submission the State included a detailed emission test measurement protocol. This protocol establishes comprehensive test methods for the Reynolds Metals Company plant at Massena, New York. In order for the protocol to be approvable, EPA must find that it is adequate for use in determining compliance of the source with Part 209. However, EPA needs additional supporting information from the State in order to make such a finding. Therefore, this protocol will be subject to a separate rulemaking action at a future date.

In order to ensure that any facility-wide emission reduction plan, test procedure or compliance date extension approved by the Commissioner conforms to the Emission Guideline, EPA regulations and policy, it will be necessary that it be reviewed and approved by EPA. Therefore, any facility-wide emission reduction plan, test procedure or compliance date extension must be submitted to and approved by EPA as a plan revision.

EPA is approving the New York plan for controlling fluoride emissions from existing primary aluminum reduction plants. This action is taken without prior proposal because it is viewed as noncontroversial and no adverse comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of the Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements

which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under 5 U.S.C. Section 605(b), I certify that this rule will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(Sec. 111(d) of the Clean Air Act, as amended (42 U.S.C. 7411(d)))

William D. Ruckelshaus,
Administrator, Environmental Protection Agency.

Dated: March 16, 1984.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart HH—New York

1. A new undesignated centerhead and § 62.8101 is added as follows:

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.8101 Identification of plan.

(a) Untitled.

(b) The plan was officially submitted and approved as follows:

(1) Part 209—"Primary Aluminum Reduction Plants" of Title 6 of the New York Code of Rules and Regulations effective August 20, 1983.

(2) Supplemental Information submitted on September 2, 1983.

(c) Identification of Sources—The plan includes the following plants:

(1) Alcoa Massena Operations.

(2) Reynolds Metals Co., St. Lawrence Reduction Plant.

(d) The plan is approved with the provision that any facility-wide emission reduction plan, test procedure or compliance date extension from the provisions of Part 209—"Primary Aluminum Reduction Plants" approved by the Commissioner of the New York State Department of Environmental Conservation must be submitted and approved as a plan revision.

[FR Doc. 84-9958 Filed 4-12-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 78-72; Phase I]

MTS and WATS Market Structure; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The erratum corrects citation errors in Paragraph 151 of the *Memorandum Opinion and Order* ("Further Reconsideration") in CC Docket No. 78-72, Phase I, concerning the MTS and WATS Market Structure, published on March 2, 1984, 49 FR 7810.

FOR FURTHER INFORMATION CONTACT: Larry Povich, Common Carrier Bureau, (202) 632-6363.

Erratum

Released: April 6, 1984.

1. On February 15, 1984, the Commission released the written text of a *Memorandum Opinion and Order* ("Further Reconsideration") in CC Docket No. 78-72, Phase I, published March 2, 1984, 49 FR 7810. An Erratum correcting errors in the text and Appendix A was released February 15, 1984, Mimeo 2446. This Erratum corrects errors in Paragraph 151 of the text.

Textual Corrections

2. The citations to the United States Code in paragraph 151 should read 47 U.S.C. 154(i), and 5 U.S.C. 553.

* * * * *
Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 84-9775 Filed 4-12-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 79-265; FCC 84-88]

Amendment of the Commission's Rules Concerning the Nighttime Power Limitations for Class IV AM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amended its Rules to permit Class IV AM broadcast stations to increase maximum permissible nighttime power from 250 watts to 1 kW. The additional power will enable these stations to overcome the effects of man-made noise and

foreign interference. This will improve reception in the station's coverage area.

EFFECTIVE DATE: To be deferred until signing of new U.S./Mexican Agreement.

FOR FURTHER INFORMATION CONTACT: Frederic D. Schottland, (202) 632-5414, or Jonathan David, (202) 632-7792, both of Policy and Rules Division, Mass Media Bureau.

List of Subjects in 47 CFR Part 73

Radio broadcast.

Report and Order; Proceeding Terminated

In the matter of amendment of Part 73 of the Commission's Rules and Regulations Concerning the Nighttime Power Limitations for Class IV AM Broadcast Stations; BC Docket No. 79-265.

Adopted: March 15, 1984.

By the Commission.

Released: March 23, 1984.

Introduction

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding adopted October 19, 1983, 48 FR 50571; November 2, 1983, and the comments and reply comments filed in the response to the *Notice*. In order to place the *Notice* proposal to increase the nighttime power of Class IV AM stations in context, some background information is necessary. By *Report and Order*, FCC 58-573, *Power Limitations of Class IV Stations*, 17 RR 1541 (1958), released June 2, 1958, the Commission increased the maximum permissible daytime power for Class IV AM broadcast stations from 250 watts to 1 kilowatt. This action was taken in response to a petition for rule making filed April 3, 1956 by Community Broadcasters Association, Inc. ("CBA"), an organization representing Class IV AM stations. The across-the-board approach to the power increase was chosen to improve reception of these stations while maintaining their existing coverage areas. CBA also had petitioned for a power increase at night as well, but this could not then be pursued because of international treaty constraints. Recent international developments have suggested that these international restrictions against increasing nighttime power will likely be removed at an early date. With this in mind, the Commission decided to initiate a proceeding to explore a nighttime power increase for Class IV stations.

2. This proceeding began with a *Notice of Inquiry* and was followed by a *Notice of Proposed Rulemaking* which proposed an across-the-board approach to increasing power for Class IV

stations. Specifically, a four-fold increase in nighttime power to a maximum of 1 kilowatt was proposed. Thus, all stations with nighttime power of 250 watts would be able to increase to 1 kilowatt. Those with 100 watts could increase to 400 watts. An alternative proposal concerning use of $\frac{1}{2}$ to $\frac{3}{4}$ wavelength power was rejected because it would only be available to a limited number of stations. Finally, comments were sought on simplified procedures that could be used to implement the power increase for stations already using 1 kilowatt power daytime.

Discussion

3. Comments were received from, or on behalf of, 177 radio stations and five broadcast trade associations. All the respondents favored increasing the maximum Class IV nighttime power from 250 watts to 1 kilowatt and supported making such a power increase available even to stations operating with daytime powers of only 250 or 500 watts. All of the parties agreed that higher nighttime power could help overcome reception problems that now exist. Although there was total agreement on the substantive issues, there were differences in suggestions on how best to implement the proposal. A few suggested doing this by order, without a need to file any application. Most supported a simplified application procedure along the lines mentioned in the *Notice of Proposed Rulemaking*. Further, most of the comments recognized the need for different procedures in cases where the station did not have 1 kilowatt power daytime.

4. We believe that the nighttime power limit for Class IV stations should be raised. The record is clear that much can be gained by such an increase in nighttime power for Class IV stations. The higher signal levels that would be provided can help overcome problems in reception caused by man-made and other noise as well as interference from foreign stations. At the same time, an increase in power would not be expected to cause greater interference so long as other stations on the frequency increased their power at the same rate. Using the four-fold increase proposed, the nighttime power would be increased from 250 watts to 1 kilowatt (or from 100 watts to 400 watts for those few stations not at the 250 watt level at night). While virtually all stations will be able to benefit from the new power limits, there may be a few special situations in which this will not be possible either because of the potential for adjacent channel problems or

because of proximity to the Canadian or Mexican borders.

5. In addition to the question of the power limit itself, it is necessary to examine the method by which stations could seek to increase their power. This includes the substantive question of their eligibility for an increase in power as well as the procedures to use in obtaining it. For most stations there are no substantive problems,¹ as the stations already operate with 1 kilowatt daytime on a non-directional basis. For directional stations or those at a lower power than 1 kilowatt daytime, the Commission will need to determine whether there are substantive impediments to a nighttime power increase. Two such impediments are being removed so that a Class IV station no longer is precluded from using greater power at night than during the day and no longer has to use only the specific power levels of 250 W, 500 W or 1 kilowatt. Finally, special treatment will need to be afforded to stations close to the Mexican and Canadian borders.

6. In addition to the substantive matters already discussed, there are important procedural issues to resolve. With respect to the manner in which the nighttime power increase by Class IV stations should be implemented, all who addressed the question favored the elimination of a 2-step licensing procedure by treating a Class IV station nighttime power increase as a minor and not a major change. Some respondents proposed the elimination of the requirement to file any application. Instead they would have the Commission issue a blanket nighttime power increase for all Class IV stations in a manner like that used by the Commission in issuing post-sunset service authorizations (PSSA's). Others suggested the preparation of a new form or the revision of an existing form such as F.C.C. Form 302. Similarly, the Community Broadcasters Association, with the support of the National Association of Broadcasters, advocated the use of pages 1 and 2 of Section 1 of F.C.C. Form 302, on which all of the questions other than question 1 would be answered by the phrase "not applicable."

7. Although we agree that all possible simplification is appropriate, it will not be possible to eliminate all filing requirements. Likewise, it would not be appropriate to follow the approach employed in issuing post-sunset service

¹ In such cases, no new groundwave interference would result, co-channel or on an adjacent channel. While some skywave impact might develop, this is a co-channel phenomenon only, and Class IV stations are not accorded protection from such interference.

authorizations (PSSA's). PSSA's are permissive authorizations that do not counter license rights. Thus they would not be a satisfactory substitute for an actual license modification. Usually, a modification of a license is accomplished through the filing and grant of an application, but that process introduces burdens on applicants and the Commission alike. Therefore, to the extent possible, we wish to avoid imposing such burdens. Fortunately, in this case, a unique alternative is available which can avoid the need for application filings for most stations. Also, even for those that do have to file, simplified procedures can be used in a further effort to expedite the process of authorizing nighttime power increases for Class IV stations.

8. For the majority of stations which already operate non-directionally with a power of 1 kilowatt daytime, we are issuing Show Cause Orders to each of these stations, proposing to modify their licenses to specify nighttime operation with 1 kilowatt. Unless an objection by that station is interposed, the license automatically would be so modified. Stations opposing this modification would not be granted a hearing to oppose such an increase in power. Instead, they will continue to use their present power and the modification Show Cause Order will be dismissed on the Commission's own motion. In other words, "no response" to the order will result in a modified license providing the increased nighttime power. Any objection filed will result in no change in the authorization.

9. For the remaining stations, which currently operate with less than 1 kilowatt daytime or which operate directionally and thus protect other licensees, it will be necessary to follow the normal two-step application process. These stations will file a Form 301 proposing the increase in power, which will be treated as a minor change, and then a Form 302 to have a license issued to cover that permit. Traditionally, we have considered a request for an increase in power of an AM station to be a major change. These increases in power, while they require our examination, are not of such magnitude that they need be treated as major changes, however. Indeed, as we have previously indicated, so long as the other stations on the frequency increase their power at the same rate, the nighttime power increase of Class IV stations is not expected to cause additional interference. Furthermore, classifying these changes as minor changes will have the added benefit of easing filing burdens on applicants and

will facilitate early processing of such applications by the Commission. In order to avoid confusion, a complete list of stations in both categories is attached as Appendix B.

10. Accordingly, it is ordered that §§ 73.21, 73.27, 73.182, 73.189 and 73.73.371 are amended, effective (to be announced) as set forth in Appendix A hereto.²

11. Authority for this action is contained in section 4(i), 303 and 307(b) of the Communications Act of 1934, as amended.

Regulatory Flexibility Analysis

I. Need and Purpose of the Rule

The rule is designed to reduce by 50 percent, the nighttime program signal deterioration caused by man-made interference and that suffered from the signals of foreign stations. Additionally, in some instance the power increase will expand the nighttime interference-free coverage area. In any event, the power increase will improve program signal quality and will strengthen the station's competitive position in the market place.

II. Summary of Issues Raised by Public Comment in Response to the Initial Notice of Proposed Rule Making

No issues raised.

III. Significant Alternatives Considered and Rejected

The only alternative proposed was the increase of groundwave signal strength by increasing the effective antenna height. This was rejected because it would create inequities among the Class IV stations. It would upset the existing balance between signal strength and objectionable interference because it would be available to only a few stations. Finally, greater antenna height would not provide the claimed reduction of skywave interference. Instead, it would merely redistribute the interference.

For further information concerning this proceeding, contact Frederic D. Schottland (202) 632-5414, or Jonathan David (202) 632-7792, both of Policy and Rules Division, Mass Media Bureau.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

² In order to effectuate this power increase, it will be necessary to reach agreements with Canada and Mexico, both as to the substantive matter of the power level and the procedural one of the coordinating a date for the increase to take place. Since this process is still underway, the effective date cannot now be established. However, the Show Cause Orders will be sent and applications can be filed in the meantime. Then, once the international situation is clarified, the date can be set and the power increase can be effectuated.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. Section 73.21, paragraph (c) and the Notes are revised to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

(c) *Local channel.* A local channel is one on which several stations operate unlimited time with powers no greater than provided in this paragraph. The primary service area of a station operating on a local channel may be reduced as a consequence of interference. Such stations operate with power no greater than 1 kW daytime or nighttime.

(1) *Class IV station.* A class IV station is a station operating on a local channel and designed to render service primarily to a community and the suburban and rural areas contiguous thereto. The power of a station of this class shall not be less than 0.25 kW, nor more than 1 kW, and its primary service area is subject to interference in accordance with § 73.182. Stations which are licensed to operate with 0.1 kW may continue to do so.

Note 1.—Under NARBA, the power for Class IV stations is 0.25 kW daytime as well as nighttime. The U.S./Canadian Agreement and the U.S./Mexican Agreement permit such stations to operate with power not in excess of 1 kW daytime. Pursuant to these Agreements and informal coordination with the NARBA signatories, the Commission will consider applications for Class IV stations on local channels with daytime powers in excess of 0.25 kW, up to 1 kW, if no objectionable interference would be caused (under the standards set forth in the pertinent international agreement) to a duly notified station in Canada, Mexico, or any foreign country signatory to NARBA.

Note 2.—Class IV stations located within 100 kilometers (62 miles) of the Mexican border and presently authorized to operate with a daytime power of less than 1 kW, may file applications to increase their daytime and/or nighttime power to 1 kW. However, such applications will be granted only after coordination with Mexico, pursuant to the U.S./Mexican Agreement.

2. § 73.27 is amended by deleting the Note.

3. § 73.182(a)(4) is revised to read as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(4) Class IV stations operate on local channels, normally rendering primary service to a community and the suburban or rural areas, contiguous thereto, with powers not less than 0.25 kW, nor more than 1 kW, except as provided in § 73.21(c)(1) (for restrictions on daytime power of stations near the Mexican border see Note 2 in § 73.21). Such stations are normally protected to the 0.5 mV/m contour daytime. On local channels the separation required for the daytime protection shall also determine the nighttime separation. Where directional antennas are employed daytime by Class IV stations operating with more than 0.25 kW power, the separations required shall in no case be less than those necessary to afford protection, assuming nondirectional operation with 0.25 kW. In no case will 0.25 kW or greater nighttime power be authorized to a station unable to operate nondirectionally at 0.25 kW in the daytime. The actual nighttime limitation will be calculated.

4. In Section 73.182(v), the bottom line of the table, which is designated as IV under the Class of station column, is amended by revising the text in column "Permissible power" to read as follows:

§ 73.182 Engineering standards of allocation.

(v) ***
Permissible power

0.25 to 1 kW

5. § 73.3571(a)(1) is revised to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

(a) ***
(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change is any increase in power (except for Class IV stations on local channels), or any change in frequency, hours of operation, or station location. However, the FCC may, within 15 days

after the acceptance for filing of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore is subject to the provisions of §§ 73.3580 and 1.1111 pertaining to major changes.

Appendix B

Appendix B is comprised of two lists as follows:

List A—Contains the list of stations that are currently licensed to operate with less than 1 kW daytime or which use a directional array daytime. These stations will be required to follow the normal two step application process in order to obtain higher power nighttime than is permitted daytime.

List B—Contains the list of Class IV stations that currently are licensed to operate with 1 kW daytime non-directionally. These stations are those that will receive Show Cause Orders proposing to modify their licenses to specify nighttime power of 1 kW.

APPENDIX B—LIST A

1230	KIFW	Sitka	AK	1230	KGHS	International Falls	MH
1230	KTNC	Falls City	NE	1230	KELY	Ely	NV
1230	WECK	Cheektowaga	NY	1230	WEEX	Easton	PA
1230	WKCE	Herriman	TN	1240	KJOP	Lemoore	CA
1240	KPPC	Pasadena	CA	1240	KLOA	Ridgecrest	CA
1240	KCRT	Trinidad	CO	1240	WINK	Fort Myers	FL
1240	KMCL	McCall	ID	1240	WSDR	Sterling	IL
1240	WWWC	Wilkesboro	NC	1240	KDLR	Devils Lake	ND
1240	WGBB	Freeport	NY	1240	WJTN	Jamestown	NY
1340	KFBR	Nogales	AZ	1340	WLVC	Fort Kent	ME
1340	WLEW	Bad Axe	MI	1340	WCSR	Hilldale	MI
1340	WEXL	Royal Oak	MI	1340	KHUB	Fremont	NE
1340	WKSJ	Jamestown	NY	1340	WLVL	Lockport	NY
1340	WOLB	Athens	OH	1340	KTOW	Sand Springs	OK
1340	KWVR	Enterprise	OR	1340	WSAJ	Grove City	PA
1340	WOYL	Oil City	PA	1340	WSTA	Charlotte Amalie	VI
1340	KYCN	Wheatland	WY	1400	KCOG	Centerville	IA
1400	WCYN	Cynthiana	KY	1400	KGHS	Truth or Consequences	NM
1400	WDNY	Denville	NY	1450	KLAM	Cordova	AK
1450	WDLK	Dadeville	AL	1450	KJMB	Blythe	CA
1450	KOBO	Yuba City	CA	1450	WKET	Kewanee	IL
1450	WTHU	Thurmont	MD	1450	WKIP	Poughkeepsie	NY
1450	KCTI	Gonzales	TX	1450	KONP	Port Angeles	WA
1490	KIIO	Manitou Springs	CO	1490	WSFB	Quitman	GA
1490	KBAB	Indianola	IA	1490	WACM	West Springfield	MA
1490	WBTA	Batavia	NY	1490	WOLF	Syracuse	NY
1490	KOKC	Guthrie	OK	1490	WSDC	Hartsville	SC
1490	KOJO	Laramie	WY				

APPENDIX B—LIST B

1230	KVAK	Valdez	AK	1230	WAUD	Auburn	AL
1230	WKWL	Floala	AL	1230	WJBB	Haleyville	AL
1230	WBHP	Huntsville	AL	1230	WHOD	Jackson	AL
1230	WNUZ	Talladega	AL	1230	WTBC	Tuscaloosa	AL
1230	KCON	Conway	AR	1230	KFPW	Fort Smith	AR
1230	KBTM	Jonesboro	AR	1230	KBZB	Bisbee	AZ
1230	KAAA	Kingman	AZ	1230	KFLR	Phoenix	AZ
1230	KATO	Safford	AZ	1230	KINO	Winslow	AZ
1230	KGEO	Bakersfield	CA	1230	KPRD	Barstow	CA
1230	KIBS	Bishop	CA	1230	KXO	El Centro	CA
1230	KDAC	Fort Bragg	CA	1230	KGJ	Los Angeles	CA
1230	KPRL	Paso Robles	CA	1230	KPAK	Redding	CA
1230	KWG	Stockton	CA	1230	KEXO	Grand Junction	CO
1230	KLRR	Leadville	CO	1230	KDZA	Pueblo	CO
1230	KBCR	Steamboat Springs	CO	1230	KSTC	Sterling	CO
1230	WINF	Manchester	CT	1230	WGGG	Gainesville	FL
1230	WONN	Lakeland	FL	1230	WMAF	Madison	FL

APPENDIX B—LIST B—Continued

1230	WSBB	New Smyrna Beach	FL	1230	WNVY	Pensacola	FL
1230	WCNH	Quincy	FL	1230	WJNO	West Palm Beach	FL
1230	WCKJ	Augusta	GA	1230	WBLJ	Dalton	GA
1230	WXLJ	Dublin	GA	1230	WFOM	Marietta	GA
1230	WSOK	Savannah	GA	1230	WAYX	Waycross	GA
1230	KFJB	Marshalltown	IA	1230	KBAR	Burley	ID
1230	KORT	Grangeville	ID	1230	KRXK	Rexburg	ID
1230	WJBC	Bloomington	IL	1230	WMPZ	Moline	IL
1230	WHCO	Sparta	IL	1230	WJOB	Hammond	IN
1230	WSAL	Logansport	IN	1230	WTCJ	Tell City	IN
1230	WBOW	Terre Haute	IN	1230	WHIR	Danville	KY
1230	WHOP	Hopkinsville	KY	1230	WANO	Pineville	KY
1230	KLIC	Monroe	LA	1230	WBOK	New Orleans	LA
1230	KSLO	Opelousas	LA	1230	WMNB	North Adams	MA
1230	WESX	Salem	MA	1230	WNEB	Worcester	MA
1230	WITH	Baltimore	MD	1230	WALI	Cumberland	MD
1230	WBME	Belfast	ME	1230	WODY	Calais	ME
1230	WSJR	Madawaska	ME	1230	WCUZ	Grand Rapids	MI
1230	WIKB	Iron River	MI	1230	WMPC	Lapeer	MI
1230	WSOO	Sault Sainte Marie	MI	1230	WSTR	Sturgis	MI
1230	WKLK	Cloquet	MN	1230	KYSM	Mankato	MN
1230	KMRS	Morris	MN	1230	KTRF	Thief River Falls	MN
1230	KWNO	Winona	MN	1230	KODE	Joplin	MO
1230	KLWT	Lebanon	MO	1230	KWIX	Moberly	MO
1230	WCMA	Corinth	MS	1230	WHSY	Hattiesburg	MS
1230	WSSO	Starkville	MS	1230	WAZF	Yazoo City	MS
1230	KBMN	Bozeman	MT	1230	KHDN	Hardin	MT
1230	KXLO	Lewistown	MT	1230	KLCB	Libby	MT
1230	WSKY	Asheville	NC	1230	WFAI	Fayetteville	NC
1230	WMFR	High Point	NC	1230	WISP	Kinston	NC
1230	WNNC	Newton	NC	1230	WCBT	Roanoke Rapids	NC
1230	KDIX	Dickinson	ND	1230	KHAS	Hastings	NE
1230	WTSV	Claremont	NH	1230	WCMC	Wildwood	NJ
1230	KPSA	Allamogordo	NM	1230	KOTS	Deming	NM
1230	KYVA	Gallup	NM	1230	KFUN	Las Vegas	NM
1230	KRSY	Roswell	NM	1230	KLAV	Las Vegas	NV
1230	KCBN	Reno	NV	1230	WENY	Elmira	NY
1230	WIGS	Gouverneur	NY	1230	WHUC	Hudson	NY
1230	WLFH	Little Falls	NY	1230	WFAS	White Plains	NY
1230	WMLX	Cincinnati	OH	1230	WCOL	Columbus	OH
1230	WIRO	Ironton	OH	1230	WCWA	Toledo	OH
1230	KADA	Ada	OK	1230	WBBZ	Ponca City	OK
1230	KVAS	Astoria	OR	1230	KRNS	Burns	OR
1230	KHSN	Coos Bay	OR	1230	KRDR	Gresham	OR
1230	KQIK	Lakeview	OR	1230	KTDO	Toledo	OR
1230	WBVP	Beaver Falls	PA	1230	WKBO	Harrisburg	PA
1230	WCRP	Johnstown	PA	1230	WBPZ	Lock Haven	PA
1230	WTIV	Titusville	PA	1230	WNK	Arecibo	PR
1230	WERI	Westerly	RI	1230	WAIM	Anderson	SC
1230	WNOK	Columbia	SC	1230	WOLS	Florence	SC
1230	KYKC	Sioux Falls	SD	1230	WMLR	Hohenwald	TN
1230	WAKI	McMinnville	TN	1230	KSIX	Corpus Christi	TX
1230	KDLK	Del Rio	TX	1230	KNUZ	Houston	TX
1230	KERV	Kernville	TX	1230	KLVT	Levelland	TX
1230	KEEE	Nacogdoches	TX	1230	KOZA	Odessa	TX
1230	KGRO	Pampa	TX	1230	KSEY	Seymour	TX
1230	KSST	Sulphur Springs	TX	1230	WACO	Waco	TX
1230	KLAF	Murray	UT	1230	KOAL	Price	UT
1230	WBBI	Abingdon	VA	1230	WODI	Brookneal	VA
1230	WXCJ	Clifton Forge	VA	1230	WFVA	Fredericksburg	VA
1230	WNOR	Norfolk	VA	1230	WJOY	Burlington	VT
1230	KOZI	Chelan	WA	1230	WJOY	Essex	WA
1230	KKER	Spokane	WA	1230	WHBY	Appleton	WI
1230	WCLO	Janesville	WI	1230	WXCO	Wausau	WI
1230	WLOG	Logan	WV	1230	WKYG	Parkersburg	WV
1230	KVOC	Casper	WY	1240	WEBJ	Brewton	AL
1240	WPRN	Butler	AL	1240	WULA	Eufaula	AL
1240	WBCF	Florence	AL	1240	WARF	Jasper	AL
1240	KVRC	Arkadelphia	AR	1240	KTLO	Mountain Home	AR
1240	KWAK	Stuttgart	AR	1240	KSMI	Globe	AZ
1240	KBWA	Williams	AZ	1240	KPOD	Crescent City	CA
1240	KNRY	Monterey	CA	1240	KENZ	Sacramento	CA
1240	KDIG	San Bernardino	CA	1240	KSON	San Diego	CA
1240	KSMA	Santa Maria	CA	1240	KSUE	Susanville	CA
1240	KRDO	Colorado Springs	CO	1240	KDGO	Durango	CO
1240	KSLV	Monte Vista	CO	1240	WWCO	Watgerbury	CT
1240	WBGC	Chipley	FL	1240	WEUS	Eustis	FL
1240	WMNB	Melbourne	FL	1240	WFOY	Saint Augustine	FL
1240	WBHB	Fitzgerald	GA	1240	WGGA	Gainesville	GA
1240	WLAG	La Grange	GA	1240	WDDO	Macon	GA
1240	WWNS	Statesboro	GA	1240	WPAX	Thomasville	GA
1240	WTWA	Thomson	GA	1240	KDEC	Decatur	IA
1240	KWLC	Decorah	IA	1240	KBIZ	Ottumwa	IA
1240	KICD	Spencer	IA	1240	KJCY	Mountain Home	ID
1240	KWIK	Pocatello	ID	1240	WCRW	Chicago	IL
1240	WEDC	Chicago	IL	1240	WSBC	Chicago	IL
1240	WEBQ	Harrisburg	IL	1240	WTAX	Springfield	IL
1240	WHBU	Anderson	IN	1240	KIUL	Garden City	KS
1240	KAKZ	Wichita	KS	1240	WINN	Louisville	KY
1240	WFTM	Maysville	KY	1240	WPKE	Pikeville	KY
1240	WSFC	Somerset	KY	1240	KASO	Minden	LA
1240	KANE	New Iberia	LA	1240	WHAI	Greenfield	MA
1240	WOCB	West Yarmouth	MA	1240	WCEM	Cambridge	MD

APPENDIX B—List B—Continued

1240	WJEJ	Hagerstown	MD	1240	WCOU	Lewiston	ME
1240	WMKR	Millinocket	ME	1240	WATT	Cadillac	MI
1240	WCBY	Cheboygan	MI	1240	WJPD	Ishpeming	MI
1240	WJIM	Lansing	MI	1240	WGGR	Hibbing	MN
1240	WJON	Saint Cloud	MN	1240	KFMO	Fiat River	MO
1240	KWOS	Jefferson City	MO	1240	KNEM	Nevada	MO
1240	WMPA	Aberdeen	MS	1240	WGRM	Greenwood	MS
1240	WTAM	Gulfport	MS	1240	WMIS	Natchez	MS
1240	KBYM	Billings	MT	1240	KLTZ	Glasgow	MT
1240	KLYQ	Hamilton	MT	1240	KBLL	Helena	MT
1240	WPNF	Brevard	NC	1240	WHVN	Charlotte	NC
1240	WCNC	Elizabeth City	NC	1240	WJNC	Jacksonville	NC
1240	WPJL	Releigh	NC	1240	KFOR	Lincoln	NE
1240	KODY	North Platte	NE	1240	WFTN	Franklin	NH
1240	WSNJ	Bridgeton	NJ	1240	KAMO	Carlsbad	NM
1240	KCLV	Clovis	NM	1240	KLTN	Los Ranchos de Alb	NM
1240	KELK	Elko	NV	1240	WGVA	Geneva	NY
1240	WVOS	Liberty	NY	1240	WNBZ	Saranac Lake	NY
1240	WVWD	Schenectady	NY	1240	WATN	Watertown	NY
1240	WBBW	Youngstown	OH	1240	WHIZ	Zanesville	OH
1240	KVSO	Ardmore	OK	1240	KADS	Elk City	OK
1240	KBEL	Idabel	OK	1240	KOKL	Okmulgee	OK
1240	KFLY	Corvallis	OR	1240	KTIX	Pendleton	OR
1240	KPRB	Redmond	OR	1240	KQEN	Roseburg	OR
1240	WRTA	Altoona	PA	1240	WHUM	Reading	PA
1240	WOBQ	Selinsgrove	PA	1240	WBAX	Wilkes-Barre	PA
1240	WALO	Humacao	PR	1240	WYON	Woonsocket	RI
1240	WKDK	Newberry	SC	1240	WDXY	Sumter	SC
1240	KCCR	Pierre	SD	1240	WBEJ	Elizabethton	TN
1240	WEKR	Fayetteville	TN	1240	WIMZ	Knoxville	TN
1240	WKDA	Nashville	TN	1240	WSDT	Soddy-Daisy	TN
1240	WENK	Union City	TN	1240	KVLF	Alpine	TN
1240	KXYL	Brownwood	TX	1240	KTAM	Bryan	TX
1240	KAWS	Hemphill	TX	1240	KOCA	Kilgore	TX
1240	KSOX	Raymondville	TX	1240	KXOX	Sweetwater	TX
1240	WSSV	Petersburg	VA	1240	WROV	Roanoke	VA
1240	WTON	Staunton	VA	1240	WSKI	Montpelier	VT
1240	KXLE	Ellensburg	WA	1240	KGY	Olympia	WA
1240	WOMT	Manitowoc	WI	1240	WIBU	Poynette	WI
1240	WOBT	Rhineland	WI	1240	WJMG	Rice Lake	WI
1240	WKQY	Bluefield	WV	1240	WTIP	Charleston	WV
1240	WDNE	Elkins	WV	1240	KFBC	Cheyenne	WY
1240	KEVA	Evanston	WY	1240	KASL	Newcastle	WY
1240	KRAL	Rawlins	WY	1240	KTHE	Thermopolis	WY
1340	WXXR	Cullman	AL	1340	WXOR	Florence	AL
1340	WMRK	Selma	AL	1340	WFEB	Sylacauga	AL
1340	KBTA	Batesville	AR	1340	KZNG	Hot Springs	AR
1340	KCAT	Pine Bluff	AR	1340	KBRB	Springdale	AR
1340	KIKO	Miami	AZ	1340	KPGE	Page	AZ
1340	KATA	Arcata	CA	1340	KWXY	Cathedral City	CA
1340	KMAK	Fresno	CA	1340	KDOL	Mojave	CA
1340	KSFE	Needles	CA	1340	KORV	Oroville	CA
1340	KATY	San Luis Obispo	CA	1340	KIST	Santa Barbara	CA
1340	KOMY	Watsonville	CA	1340	KDEN	Denver	CO
1340	KQIL	Grand Junction	CO	1340	KVRH	Salida	CO
1340	WNHC	New Haven	CT	1340	WTAN	Clearwater	FL
1340	WWFL	Clermont	FL	1340	WROD	Daytona Beach	FL
1340	WDSR	Lake City	FL	1340	WTYS	Marianna	FL
1340	WPBR	Palm Beach	FL	1340	WSEB	Sebring	FL
1340	WFSH	Valparaiso-Nicevil	FL	1340	WGAU	Athens	GA
1340	WIGO	Atlanta	GA	1340	WBBQ	Augusta	GA
1340	WGAA	Codartown	GA	1340	WOKS	Columbus	GA
1340	WBBT	Lyons	GA	1340	WTIF	Tifton	GA
1340	KROS	Clinton	IA	1340	KSKI	Hailey	ID
1340	KXTC	Nampa	ID	1340	KACH	Preston	ID
1340	WSOY	Decatur	IL	1340	WHPI	Herrin	IL
1340	WJOL	Joliet	IL	1340	WBIW	Bedford	IN
1340	WTRC	Elkhart	IN	1340	WLBC	Muncie	IN
1340	KFKF	Kansas City	KS	1340	KSEK	Pittsburg	KS
1340	WCMI	Ashland	KY	1340	WBSN	Bowling Green	KY
1340	WKCB	Hindman	KY	1340	WNBS	Murray	KY
1340	WEKY	Richmond	KY	1340	KVOB	Bastrop	LA
1340	KRMD	Shreveport	LA	1340	WGAW	Gardner	MA
1340	WNBH	New Bedford	MA	1340	WBRK	Pittsfield	MA
1340	WFAU	Augusta	ME	1340	WOME	Dover-Foxcroft	ME
1340	WHOU	Houlton	ME	1340	WTWN	Grand Rapids	MI
1340	WMTE	Manistee	MI	1340	WAGN	Menominee	MI
1340	WWPZ	Petokey	MI	1340	KOBR	Brainerd	MN
1340	KDLM	Detroit Lakes	MN	1340	WEVE	Eveleth	MN
1340	KROC	Rochester	MN	1340	KWLM	Willmar	MN
1340	KXEO	Mexico	MO	1340	KLID	Poplar Bluff	MO
1340	KSMO	Salem	MO	1340	KICK	Springfield	MO
1340	WJMB	Brookhaven	MS	1340	WKOZ	Kosciusko	MS
1340	WAML	Laurel	MS	1340	KCAP	Helena	MT
1340	KPRK	Livingston	MT	1340	KATL	Miles City	MT
1340	KYLT	Missoula	MT	1340	WOOW	Greenville	NC
1340	WJRI	Lenoir	NC	1340	WTSS	Lumberton	NC
1340	WCBQ	Oxford	NC	1340	WAAV	Wilmington	NC
1340	WAIK	Winston-Salem	NC	1340	KPOK	Bowman	ND
1340	KXPO	Grafton	ND	1340	KGFV	Kearney	NE
1340	KSID	Sidney	NE	1340	WDCR	Hanover	NH
1340	WMID	Atlantic City	NJ	1340	KKBK	Aztec	NM
1340	KSYX	Santa Rosa	NM	1340	KSLI	Silver City	NM

APPENDIX B—LIST B—Continued

1340	KKIT	Taos	NM	1340	KRAM	Las Vegas	NV
1340	KBET	Reno	NV	1340	WMBO	Auburn	NY
1340	WENT	Gloversville	NY	1340	WMSA	Massena	NY
1340	WALL	Middletown	NY	1340	WIRY	Plattsburgh	NY
1340	WNCO	Ashland	OH	1340	WIZE	Springfield	OH
1340	WSTV	Steubenville	OH	1340	KIHN	Hugo	OK
1340	KXXY	Oklahoma City	OK	1340	KLOO	Corvallis	OR
1340	KIHR	Hood River	OR	1340	KBBR	North Bend	OR
1340	WCVI	Connellsville	PA	1340	WHAT	Philadelphia	PA
1340	WRAW	Reading	PA	1340	WTRN	Tyrone	PA
1340	WKRZ	Wilkes-Barre	PA	1340	WWPA	Williamsport	PA
1340	WUNA	Aguadilla	PR	1340	WKEK	Charleston	SC
1340	WRHI	Rock Hill	SC	1340	WSSC	Sumter	SC
1340	KIJV	Huron	SD	1340	KTOQ	Rapid City	SD
1340	WBAC	Cleveland	TN	1340	WKRM	Columbia	TN
1340	WGRV	Greeneville	TN	1340	WKGK	Knoxville	TN
1340	WLOK	Memphis	TN	1340	WCDT	Winchester	TN
1340	KWKC	Abilene	TX	1340	KHLB	Burnel	TX
1340	KAND	Corsicana	TX	1340	KSET	El Paso	TX
1340	KBBL	Lubbock	TX	1340	KRBA	Lufkin	TX
1340	KSZN	Pampa	TX	1340	KOLE	Port Arthur	TX
1340	KTEO	San Angelo	TX	1340	KCWM	Victoria	TX
1340	KLVR	Heber City	UT	1340	WKEY	Covington	VA
1340	WHAP	Hopewell	VA	1340	WJMA	Orange	VA
1340	WVNR	Poultney	VT	1340	WSTJ	Saint Johnsbury	VT
1340	KAGT	Anacortes	WA	1340	KOTY	Kennebec	WA
1340	KAPA	Raymond	WA	1340	KWWW	Wenatchee	WA
1340	WLDY	Ladysmith	WI	1340	WMKE	Milwaukee	WI
1340	WHAR	Clarksburg	WV	1340	WEPM	Martinsburg	WV
1340	WMON	Montgomery	WV	1340	WXEE	Welch	WV
1340	KSGT	Jackson	WY	1340	KWOR	Worland	WY
1400	WTCG	Andalusia	AL	1400	WMSL	Decatur	AL
1400	WXAL	Demopolis	AL	1400	WJLD	Fairfield	AL
1400	WPPA	Fort Payne	AL	1400	WJHO	Opelika	AL
1400	KELD	El Dorado	AR	1400	KGLA	Pine Bluff	AR
1400	KWYN	Wynne	AR	1400	KSUN	Phoenix	AZ
1400	KRVZ	Springerville	AZ	1400	KTUC	Tucson	AZ
1400	KVOY	Yuma	AZ	1400	KRE	Berkeley	CA
1400	KRCQ	Indio	CA	1400	KQMS	Redding	CA
1400	KSly	San Luis Obispo	CA	1400	KKBZ	Santa Paula	CA
1400	KTRT	Truckee	CA	1400	KUKI	Ukiah	CA
1400	KONG	Visalia	CA	1400	KRLN	Canon City	CO
1400	KDTA	Delta	CO	1400	KFTN	Fort Morgan	CO
1400	KBZZ	La Junta	CO	1400	KPAG	Pagosa Springs	CO
1400	WSTC	Stamford	CT	1400	WILI	Williamantic	CT
1400	WFTL	Fort Lauderdale	FL	1400	WIRA	Fort Pierce	FL
1400	WNUE	Fort Walton Beach	FL	1400	WERD	Jacksonville	FL
1400	WPRY	Perry	FL	1400	WWJZ	Sanford	FL
1400	WPAS	Zephyrhills	FL	1400	WULF	Alma	GA
1400	WMOE	Alpharetta	GA	1400	WSGC	Elberton	GA
1400	WNEX	Macon	GA	1400	WCOH	Newnan	GA
1400	WSGA	Savannah	GA	1400	KADR	Elkader	IA
1400	KVFD	Fort Dodge	IA	1400	KART	Jerome	ID
1400	KRPL	Moscow	ID	1400	KSPT	Sandpoint	ID
1400	KIGO	St. Anthony	ID	1400	WDWS	Champaign	IL
1400	WGIL	Galesburg	IL	1400	WROZ	Evansville	IN
1400	WBAT	Marion	IN	1400	KVOE	Emporia	KS
1400	KAYS	Hays	KS	1400	WIEL	Elizabethtown	KY
1400	WFTG	London	KY	1400	WFRP	Hammond	LA
1400	KAOK	Lake Charles	LA	1400	KWLA	Many	LA
1400	WALE	Fall River	MA	1400	WLLH	Lawrence	MA
1400	WLLH	Lowell	MA	1400	WHMP	Northampton	MA
1400	WWIN	Baltimore	MD	1400	WRDO	Augusta	ME
1400	WIDE	Biddeford	ME	1400	WMCS	Machias	ME
1400	WKNR	Battle Creek	MI	1400	WQBH	Detroit	MI
1400	WLJN	Elmwood Township	MI	1400	WCCY	Houghton	MI
1400	WOXO	Munising	MI	1400	WSAM	Saginaw	MI
1400	WSJM	Saint Joseph	MI	1400	KEYL	Long Prairie	MN
1400	KMHL	Marshall	MN	1400	KLBB	Saint Paul	MN
1400	WHLR	Virginia	MN	1400	KFRU	Columbia	MO
1400	KJCF	Festus	MO	1400	KSIM	Sikeston	MO
1400	KTTS	Springfield	MO	1400	WBIP	Booneville	MS
1400	WMBC	Columbus	MS	1400	WYKC	Grenada	MS
1400	WFOR	Hattiesburg	MS	1400	WJGS	Jackson	MS
1400	KDRG	Deer Lodge	MT	1400	KXGN	Glendive	MT
1400	KARR	Great Falls	MT	1400	WBTB	Beaufort	NC
1400	WKEW	Greensboro	NC	1400	WSMR	Raeford	NC
1400	WSIC	Statesville	NC	1400	WLSE	Wallace	NC
1400	WHCC	Waynesville	NC	1400	WSMY	Weldon	NC
1400	KQDJ	Jamestown	ND	1400	KBRB	Ainsworth	NE
1400	KCOW	Alliance	NE	1400	KLIN	Lincoln	NE
1400	WBRL	Berlin	NH	1400	WTSL	Hanover	NH
1400	WLTN	Littleton	NH	1400	WOND	Pleasantville	NJ
1400	KTRC	Santa Fe	NM	1400	KTNM	Tucuman	NM
1400	KWNA	Winnemucca	NV	1400	WABY	Albany	NY
1400	WYSL	Buffalo	NY	1400	WSLB	Ogdensburg	NY
1400	WMAN	Mansfield	OH	1400	WPAY	Portsmouth	OK
1400	KWON	Bartlesville	OK	1400	KTMC	McAlester	OK
1400	KNOR	Norman	OK	1400	KIVR	Cave Junction	OR
1400	KNND	Cottage Grove	OR	1400	KJDY	John Day	OR
1400	KBCH	Lincoln City	OR	1400	WEST	Easton	PA
1400	WJET	Erie	PA	1400	WFEC	Harrisburg	PA
1400	WAMQ	Loretto	PA	1400	WKBI	Saint Marys	PA

APPENDIX B—List B—Continued

1400	WICK	Scranton	PA	1400	WRAK	Williamsport	PA
1400	WIDA	Carolina	PR	1400	WCOS	Columbia	SC
1400	WGTN	Georgetown	SC	1400	WKDY	Spartanburg	SC
1400	KBJM	Lemmon	SD	1400	WJZM	Clarksburg	TN
1400	WHUB	Cookeville	TN	1400	WLSB	Copperhill	TN
1400	WKPT	Kingsport	TN	1400	WGAP	Maryville	TN
1400	WHAL	Shelbyville	TN	1400	WNBG	Waynesboro	TN
1400	KRUN	Ballinger	TX	1400	KBYG	Big Spring	TX
1400	KUNO	Corpus Christi	TX	1400	KILE	Galveston	TX
1400	KGVJ	Greenville	TX	1400	KKNX	Huntsville	TX
1400	KEBE	Jacksonville	TX	1400	KIUN	Pecos	TX
1400	KEYE	Perryton	TX	1400	KVOP	Plainview	TX
1400	KDWT	Stamford	TX	1400	KTEM	Temple	TX
1400	KTFB	Texarkana	TX	1400	KVOU	Uvalde	TX
1400	KFTN	Provo	UT	1400	WXAM	Charlottesville	VA
1400	WHHV	Hillsville	VA	1400	WPCE	Portsmouth	VA
1400	WHLF	South Boston	VA	1400	WINC	Winchester	VA
1400	WDOT	Burlington	VT	1400	KEDO	Longview	WA
1400	KRSC	Othello	WA	1400	KPMA	Tacoma	WA
1400	WATW	Ashland	WI	1400	WLIJ	Eau Claire	WI
1400	WDUZ	Green Bay	WI	1400	WRJN	Racine	WI
1400	WRDB	Reedsburg	WI	1400	WRIG	Wausau	WI
1400	WPOZ	Clarksburg	WV	1400	WRON	Ronceverte	WV
1400	WVRC	Spencer	WV	1400	WKWK	Wheeling	WV
1400	WBTH	Williamson	WV	1400	KATI	Casper	WY
1400	KODI	Cody	WY	1450	WDNG	Anniston	AL
1450	WSMO	Bessemer	AL	1450	WCOX	Camden	AL
1450	WWNT	Dothan	AL	1450	WFIX	Huntsville	AL
1450	WLAY	Muscle Shoals	AL	1450	KJWH	Camden	AR
1450	KENA	Mena	AR	1450	KDAP	Douglas	AZ
1450	KNOT	Prescott	AZ	1450	KVSL	Show Low	AZ
1450	KFLT	Tucson	AZ	1450	KAVA	Burney	CA
1450	KOWN	Escondido	CA	1450	KPSI	Palm Springs	CA
1450	KTIP	Porterville	CA	1450	KEST	San Francisco	CA
1450	KVML	Sonoma	CA	1450	KVEN	Ventura	CA
1450	KGIW	Alamosa	CO	1450	KYOU	Greely	CO
1450	KMKR	Meeker	CO	1450	KDRW	Silverton	CO
1450	WNAB	Bridgeport	CT	1450	WOL	Washington	DC
1450	WILM	Wilmington	DE	1450	WWJB	Brooksville	FL
1450	WMFJ	Daytona Beach	FL	1450	WOCN	Miami	FL
1450	WBSR	Pensacola	FL	1450	WSPB	Sarasota	FL
1450	WSTU	Stuart	FL	1450	WTAL	Tallahassee	FL
1450	WGPC	Albany	GA	1450	WBHF	Cartersville	GA
1450	WCON	Corneia	GA	1450	WKEU	Griffin	GA
1450	WMVG	Milledgeville	GA	1450	WOCN	Savannah	GA
1450	WVLD	Valdosta	GA	1450	KCDR	Cedar Rapids	IA
1450	KBFI	Bonniers Ferry	ID	1450	KVSI	Montpelier	ID
1450	KYET	Payette	ID	1450	KEEP	Twin Falls	ID
1450	WCEV	Cicero	IL	1450	WXOL	Cicero	IL
1450	WCVS	Springfield	IL	1450	WAFX	Fort Wayne	IN
1450	WXVW	Jeffersonville	IN	1450	WASK	Lafayette	IN
1450	WAOV	Vincennes	IN	1450	KWBW	Hutchinson	KS
1450	WKQJ	Campbellsville	KY	1450	WWXL	Manchester	KY
1450	WDXR	Paducah	KY	1450	WLKS	West Liberty	KY
1450	KSIG	Crowley	LA	1450	KNOC	Natchitoches	LA
1450	WWIW	New Orleans	LA	1450	WMAS	Springfield	MA
1450	WTBO	Cumberland	MD	1450	WLKN	Lincoln	ME
1450	WRKD	Rockland	ME	1450	WOXO	South Paris	ME
1450	WATZ	Alpena	MI	1450	WHTC	Holland	MI
1450	WMIO	Iron Mountain	MI	1450	WXCM	Jackson	MI
1450	WKLA	Ludington	MI	1450	WNBY	Newberry	MI
1450	WHLS	Port Huron	MI	1450	KATE	Albert Lea	MN
1450	KBUN	Bemidji	MN	1450	KBMW	Brackennridge	MN
1450	WELY	Ely	MN	1450	KNSI	Saint Cloud	MN
1450	KFTW	Fredericktown	MO	1450	WMBH	Joplin	MO
1450	KIRX	Kirksville	MO	1450	KOKO	Warrensburg	MO
1450	KWPM	West Plains	MO	1450	WROX	Clarksdale	MS
1450	WCJU	Columbia	MS	1450	WJXN	Jackson	MS
1450	WQIC	Meridian	MS	1450	WNAT	Natchez	MS
1450	WROB	West Point	MS	1450	KXKL	Bozeman	MT
1450	KQDI	Great Falls	MT	1450	KGRZ	Missoula	MT
1450	KRBN	Red Lodge	MT	1450	KTXK	Whitfish	MT
1450	KVCK	Wolf Point	MT	1450	WATA	Boone	NC
1450	WGNC	Gastonia	NC	1450	WIZS	Henderson	NC
1450	WHKP	Hendersonville	NC	1450	WJQI	New Bern	NC
1450	WRZK	Spring Lake	NC	1450	KGCA	Rugby	ND
1450	KWBE	Beatrice	NE	1450	WKXL	Concord	NH
1450	WIIN	Atlantic City	NJ	1450	WCTG	New Brunswick	NJ
1450	KRZY	Albuquerque	NM	1450	KLMX	Clayton	NM
1450	KOBE	Las Cruces	NM	1450	KENM	Portales	NM
1450	KONE	Reno	NV	1450	WCLI	Corning	NY
1450	WWSC	Glens Falls	NY	1450	WHDL	Olean	NY
1450	WKAL	Rome	NY	1450	WJER	Dover-New Philadelphia	OH
1450	WMOH	Hamilton	OH	1450	WLEC	Sandusky	OH
1450	KWHW	Altus	OK	1450	KGFF	Shawnee	OK
1450	KSIW	Woodward	OK	1450	KEED	Eugene	OR
1450	KFLS	Klamath Falls	OR	1450	KLBM	La Grande	OR
1450	KBPS	Portland	OR	1450	WEYZ	Erie	PA
1450	WFRA	Franklin	PA	1450	WDAD	Indiana	PA
1450	WPAM	Pottsville	PA	1450	WFXX	South Williamsport	PA
1450	WMAJ	State College	PA	1450	WJPA	Washington	PA
1450	WCPR	Coamo	PR	1450	WKRI	West Warwick	RI
1450	WGCA	Charleston	SC	1450	WCBS	Greenwood	SC

APPENDIX B—LIST B—Continued

1450	WHSC	Hartsville	SC	1450	WOCK	Myrtle Beach	SC
1450	KBFS	Belle Fourche	SD	1450	KYNT	Yankton	SD
1450	WLAR	Athens	TN	1450	WZRA	Chattanooga	TN
1450	WDSG	Dyersburg	TN	1450	WSMG	Greeneville	TN
1450	WLAF	La Follette	TN	1450	WNGS	Murfreesboro	TN
1450	KAYC	Beaumont	TX	1450	KBEN	Carizzo Springs	TX
1450	KMBL	Junction	TX	1450	KCYL	Lampasas	TX
1450	KMHT	Marshall	TX	1450	KNET	Palestine	TX
1450	KSNY	Snyder	TX	1450	KURA	Moab	UT
1450	KEYY	Provo	UT	1450	KDXU	Saint George	UT
1450	WFTR	Front Royal	VA	1450	WNWZ	Highland Springs	VA
1450	WREL	Lexington	VA	1450	WMVA	Martinsville	VA
1450	WLPM	Suffolk	VA	1450	WSNO	Barre	VT
1450	WTSR	Brattleboro	VT	1450	KAYO	Aberdeen	WA
1450	KCLX	Colfax	WA	1450	KJUN	Puyallup	WA
1450	KFIZ	Fond Du Lac	WI	1450	WDLB	Marshfield	WI
1450	WRCO	Richland Center	WI	1450	WWBB	Madison	WV
1450	WIKS	Parkersburg	WV	1450	KBBS	Buffalo	WY
1450	KVOW	Riverton	WY	1450	WANA	Anniston	AL
1490	WAJF	Decatur	AL	1490	WHBB	Selma	AL
1490	KXAR	Hope	AR	1490	KDRS	Paragould	AR
1490	KOTN	Pine Bluff	AR	1490	KBAS	Bullhead City	AZ
1490	KCUZ	Clifton	AZ	1490	KYCA	Prescott	AZ
1490	KAIR	Tucson	AZ	1490	KWAC	Bakersfield	CA
1490	KGUD	Banning	CA	1490	KICO	Calexico	CA
1490	KRKC	King City	CA	1490	KTOB	Petaluma	CA
1490	KBLF	Red Bluff	CA	1490	KDB	Santa Barbara	CA
1490	KOWL	South Lake Tahoe	CA	1490	KSYC	Yreka	CA
1490	KBOL	Boulder	CO	1490	KGUC	Gunnison	CO
1490	WGCH	Greenwich	CT	1490	WOFN	Bradenton	FL
1490	WXVQ	Deland	FL	1490	WKEM	Immokalee	FL
1490	WMBM	Miami Beach	FL	1490	WCKC	Milton	FL
1490	WPXE	Starke	FL	1490	WTTB	Vero Beach	FL
1490	WSIR	Winter Haven	FL	1490	WMOG	Brunswick	GA
1490	WMJM	Cordale	GA	1490	WYYZ	Jasper	GA
1490	WRED	Monroe	GA	1490	WSNT	Sandersville	GA
1490	WSYL	Sylvania	GA	1490	WRLD	West Point	GA
1490	KBUR	Burlington	IA	1490	WDBQ	Dubuque	IA
1490	KRIB	Mason City	IA	1490	KCID	Caldwell	ID
1490	KKLB	Chubbuck	ID	1490	KOFE	St. Maries	ID
1490	WKRO	Cairo	IL	1490	WDAN	Danville	IL
1490	WESL	East Saint Louis	IL	1490	WOPA	Oak Park	IL
1490	WZOE	Princeton	IL	1490	WKBV	Richmond	IN
1490	WNDU	South Bend	IN	1490	KKAN	Phillipsburg	KS
1490	KTOP	Topeka	KS	1490	WFKY	Frankfort	KY
1490	WKAY	Glasgow	KY	1490	WOMI	Owensboro	KY
1490	WSIP	Paintsville	KY	1490	WIKC	Bogalusa	LA
1490	KEUN	Eunice	LA	1490	KJIN	Houma	LA
1490	KRUS	Ruston	LA	1490	WHAV	Haverhill	MA
1490	WMRC	Millford	MA	1490	WARK	Hagerstown	MD
1490	WPOR	Portland	ME	1490	WTVL	Waterville	ME
1490	WABJ	Adrian	MI	1490	WTIQ	Mainistiquette	MI
1490	WMPX	Midland	MI	1490	WPBK	Whitehall	MI
1490	KXRA	Alexandria	MN	1490	KLGR	Redwood Falls	MN
1490	KOMO	Carthage	MO	1490	KTTR	Rolla	MO
1490	KDRO	Sedalia	MO	1490	WLOX	Biloxi	MS
1490	WCLD	Cleveland	MS	1490	WHOC	Philadelphia	MS
1490	WTUP	Tupelo	MS	1490	WJFL	Vicksburg	MS
1490	KDBM	Dillon	MT	1490	KLYC	Laurel	MT
1490	WDUR	Durham	NC	1490	WLOE	Eden	NC
1490	WFLB	Fayetteville	NC	1490	WRNB	New Bern	NC
1490	WRMT	Rocky Mount	NC	1490	WSTP	Salisbury	NC
1490	WSVM	Valdese	NC	1490	WWIL	Wilmington	NC
1490	KNDC	Hettinger	ND	1490	KOVC	Valley City	ND
1490	KYNN	Omaha	NE	1490	WEMJ	Laconia	NH
1490	WUSS	Atlantic City	NJ	1490	KRSN	Los Alamos	NM
1490	KRTN	Raton	NM	1490	WCSS	Amsterdam	NY
1490	WKNY	Kingston	NY	1490	WICY	Malone	NY
1490	WDLG	Port Jervis	NY	1490	WCCO	Sidney	NY
1490	WBEX	Chillicothe	OH	1490	WJMO	Cleveland Heights	OH
1490	WOHI	East Liverpool	OH	1490	WMOA	Marietta	OH
1490	WMRN	Marion	OH	1490	KBIX	Muskogee	OK
1490	KBKR	Baker	OR	1490	KRNR	Roseburg	OR
1490	KBZY	Salem	OR	1490	WESB	Bradford	PA
1490	WAZL	Hazleton	PA	1490	WJNL	Johnstown	PA
1490	WLPA	Lancaster	PA	1490	WBCB	Levittown-Fairless Hills	PA
1490	WMRF	Lewistown	PA	1490	WMGW	Meadville	PA
1490	WNBT	Wellsville	PA	1490	WZBS	Ponca	PR
1490	WGCD	Chester	SC	1490	WMBB	Greenville	SC
1490	KORN	Mitchell	SD	1490	WDXB	Chattanooga	TN
1490	WCSV	Crossville	TN	1490	WITA	Knoxville	TN
1490	WJIM	Lewisburg	TN	1490	WDXL	Lexington	TN
1490	KNOW	Austin	TX	1490	KIBL	Beeville	TX
1490	KBST	Big Spring	TX	1490	KQTY	Borger	TX
1490	KNEL	Brady	TX	1490	KWMC	Del Rio	TX
1490	KSAM	Huntsville	TX	1490	KVOZ	Laredo	TX
1490	KZZN	Littlefield	TX	1490	KPLT	Panis	TX
1490	KDOK	Tyler	TX	1490	KVVC	Vernon	TX
1490	KVLL	Woodville	TX	1490	KJON	Ogden	UT
1490	WOPI	Bristol	VA	1490	WCVA	Culpeper	VA
1490	WPAK	Farmville	VA	1490	WPFX	Hampton	VA
1490	WAYB	Waynesboro	VA	1490	WKVT	Brattleboro	VT
1490	WFAD	Middlebury	VT	1490	WIKI	Newport	VT

APPENDIX B—List B—Continued

1490	WYKR	Wells River	VT	1490	KBRO	Bremerton	WA
1490	KVAC	Forks	WA	1490	KEYG	Grand Coulee	WA
1490	KLOG	Kelso	WA	1490	KENE	Toppenish	WA
1490	KTEL	Walla Walla	WA	1490	WGEZ	Beloit	WI
1490	WLXR	La Crosse	WI	1490	WIGM	Medford	WI
1490	WYTL	Oshkosh	WI	1490	WXIT	Charleston	WV
1490	WTCS	Fairmont	WV	1490	WAEY	Princeton	WV
1490	WSGB	Sutton	WV	1490	KUGR	Green River	WY
1490	KGOS	Torrington	WY				

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Proposed Rules

Federal Register

Vol. 49, No. 73

Friday, April 13, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel
Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to modify its regulations governing the Combined Federal Campaign (CFC) in order to conform to court decisions that have, for the time being at least, invalidated on constitutional grounds key eligibility criteria set forth in Executive Order No. 12404 (February 10, 1983). These proposed rules would eliminate the national eligibility process; make all health and welfare charities that qualify under 26 U.S.C. 501(c)(3), and that are otherwise qualified under this Part, eligible for local admission to the CFC; and permit individual donors to designate contributions for any health and welfare charity qualified under 26 U.S.C. 501(c)(3), whether or not such charity has been admitted to the CFC or is listed in a CFC brochure.

DATES: Comments must be received on or before May 14, 1984.

ADDRESS: Send or deliver comments to: Joseph A. Morris, General Counsel, U.S. Office of Personnel Management, 1900 E Street, N.W., Room 5H30, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Richard Ong, Special Assistant to the General Counsel of OPM, (202) 632-4632.

SUPPLEMENTARY INFORMATION: On February 17, 1984, the United States Court of Appeals for the District of Columbia Circuit affirmed a lower court ordered permanently enjoining OPM from excluding legal defense and advocacy groups from the Combined Federal Campaign (CFC) on the basis of

the provisions of Section 2(b)(1)-(3) of Executive Order No. 12353 (March 23, 1982), as amended by Section 1(b) of Executive Order No. 12404 (February 10, 1983). *NAACP Legal Defense and Educational Fund, Inc., v. Devine*, U.S.C.A., D.C. Cir. No. 83-1822. OPM will seek, through appropriate channels, the ultimate vindication of the principles of the Executive Order. Meanwhile, however, OPM is obliged to carry on the CFC under rules that conform to current judicial commands. In essence, the Court of Appeals has required OPM to admit to the CFC any health and welfare charity that is qualified under 26 U.S.C. 501(c)(3).

These proposed rules attempt to comply with that Court decision. First, they define "health and welfare agency" more broadly. A new subsection (15) is added to 5 CFR 950.101(a) allowing any health and welfare organization qualified under 26 U.S.C. 501(c)(3) to participate in the CFC.

Second, because this relaxation of standards will lead to the participation of a large number of new charitable agencies, administrative arrangements for the CFC must be modified. OPM has always maintained that any such broadening of the campaign would make the present administrative structure unworkable, overwhelming a national eligibility process with the hundreds of thousands of 501(c)(3) organizations that exists in the United States. Therefore, the national eligibility process has been eliminated. (5 CFR 950.407).

Third, in lieu of a national application process, an open pledge card is to be provided to Federal employees upon which they can write the name of any charity they wish. (5 CFR 950.513). The pledge card and the contributor information leaflet are required to carry a statement that potential contributors must be advised they can contribute to any 501(c)(3) health and welfare charity. (5 CFR 950.521(e)(1)(iv)).

Fourth, an optional list of charities may be published for a local campaign by the local Federal Coordinating Committee. (5 CFR 950.521(e)(2)). If such a list is developed, the list must prominently state that potential donors need not confine their gifts to the charities on the list. (5 CFR 950.521(e)(2)(iv)). In addition, if any agency believes that it was improperly denied inclusion on the list, it is given

an appeal to the Director of OPM. (5 CFR 950.211(h)).

Fifth, because the increased number of charities participating will make it difficult or impossible for employees to sort through what may well be an unmanageably large list, a demonstration of local presence will still be required for local listing. (5 CFR 950.211(i)). Participating charities will, for the first time, be encouraged to publicize themselves and their activities through public media or other outlets outside Federal facilities, as long as such publicity activities are not disruptive of official Federal business. (5 CFR 950.521(b)).

Sixth, because it is possible that many employees will not know which agencies are eligible under 26 U.S.C. 501(c)(3), or will inadequately or indecipherably designate unlisted agencies, there is likely to be an increased number of returned gifts and pledges. Language dealing with this situation is added at 5 CFR 950.513(c).

Seventh, the definition of the Principal Combined Fund Organization in a local campaign has always been dependent upon the definition of federated and national groups. With the changed emphasis on national eligibility, however, this point needs clarification. Therefore, a new subparagraph (5) has been added to 5 CFR 950.509(a).

Eighth, the increased number of eligible agencies especially complicates the organization of the Overseas Campaign. Further language is added at 5 CFR 950.309(e) to address these needs.

Ninth, all sections related to the former eligibility process or to restrictive language regarding non-traditional health and welfare organizations, legal defense funds, and advocacy groups are deleted.

Finally, several minor adjustments are proposed to correct errors and misspellings, simplify administration, and improve technical aspects of Campaign management.

Scope: This Part governs all fund-raising by private voluntary charitable agencies among Federal employees and members of the uniformed services of the United States at their places of work or duty. Thus it is applicable to civilian and uniformed personnel in all Executive departments and agencies throughout the world.

The Director finds that good cause exists for setting the comment period on

this proposed rulemaking at 30 days. The interested public has already given considerable attention to the eligibility ground rules for the CFC and to the judicial decisions that have necessitated this proposed rulemaking. Accordingly, a 30-day comment period will allow sufficient time for public views and recommendations to be submitted and considered while still permitting the timely effectuation of CFC arrangements for the 1984 drive.

E.O. 12291, Federal Regulations

OPM has determined that this is not a major rule for purposes of Executive Order No. 12291, Federal Regulations, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. The nominal costs of CFC participation to voluntary agencies, which costs are primarily associated with developing their applications for national admission to the campaign, are largely eliminated by termination of the national eligibility process; by relaxation of local eligibility requirements; and by the permitting of write-in designations that require no submissions of applications at all.

List of Subjects in 5 CFR Part 950

Government employees, Charitable contributions.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 950 by revising it to read, in its entirety, as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—Administration and General Provisions

Sec.

950.101 Definitions.

950.103 Summary description of the program.

Sec.

950.105 Federal policy on civil activity.

950.107 Preventing coercive activity.

Subpart B—Organization and Functional Responsibilities

950.201 Development of policy and procedures.

950.203 Program administration.

950.205 Program coordination.

950.207 Local voluntary agency representatives.

950.209 Local Federal agency heads.

950.211 Local Federal coordinating committees.

950.213 Avoidance of conflicts of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

950.301 Types of voluntary agencies.

950.303 Types of fund-raising methods.

950.305 Considerations in making Federal arrangements.

950.307 Definition of terms used in Federal arrangements.

950.309 Federated and overseas campaigns.

950.311 Off-the-job solicitation at places of employment.

Subpart D—Requirements for National Agencies

950.401 Purpose.

950.403 General requirements.

950.405 Specific requirements.

Subpart E—The Local Combined Federal Campaign

950.501 Local voluntary agencies.

950.503 Participation in Federal campaigns by local affiliated agencies.

950.505 Responsibility of local Federal coordinating committees.

950.507 Local CFC plan.

950.509 Organizing the local campaign: The Principal Combined Fund Organization.

950.511 Basic local CFC ground rules.

950.513 Contributions.

950.515 Dollar goals.

950.517 Suggested giving guides and voluntary giving.

950.519 Central receipt and accounting for contributions.

950.521 Campaign and publicity materials.

950.523 Payroll withholding.

950.525 National coordination and reporting.

Authority: E.O. No. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR, 1982 Comp., p. 139, and E.O. No. 12404 (February 10, 1983), 48 FR 6885 (February 15, 1983).

Subpart A—Administration and General Provisions

§ 950.101 Definitions.

(a) The terms "voluntary agency," "voluntary health and welfare agency," "voluntary charitable agency," and "voluntary charitable health and welfare agency" mean an organization that is organized and operated for the purpose of rendering, or of materially or financially supporting the rendering of, one or more of the following services directly to, and for the direct benefit of, human beings:

(1) Delivery of health care to ill or infirm individuals;

(2) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(3) Health research for the benefit of ill or infirm individuals;

(4) Delivery of education, training, and care to physically and mentally handicapped individuals;

(5) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are victims of intra-family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(6) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes and emergencies;

(7) Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, the preparation and delivery of meals, educational opportunities, and job training;

(8) Legal aid services that are provided to needy, poor, and indigent individuals solely because of their inability to afford legal counsel and without a policy or practice of discrimination for or against the kind of cause, claim, or defense of the individual;

(9) Protection of families that, on account of need, poverty, indigence, or emergency, are in long-term or short-term need of family, child-care, and maternity services, child and marriage counseling, foster care, and guidance or assistance in the management and maintenance of the home and household;

(10) Relief of needy, poor, and indigent infants and children, and of orphans, including the provision of adoption services;

(11) Relief of needy, poor, and indigent adults and of the elderly;

(12) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(13) Assistance, consistent with the mission of the Federal agency or facility involved, to members of its staff or service who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs;

(14) Lessening of the burdens of government with respect to the

provision of any of the foregoing services; or

(15) Any other health and welfare service rendered by a charitable health and welfare entity organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3).

(b) Campaign terms:

(1) "Director" shall mean the Director of the United States Office of Personnel Management, or his delegate;

(2) "Employee" shall mean any person employed by the government of the United States of any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniform services;

(3) "Combined Federal Campaign" or "Campaign" or "CFC" shall mean the fund-raising program established and administered by the Director pursuant to Executive Order No. 12353, as amended by Executive Order No. 12404, and any subsidiary units of such program;

(4) "Community" shall mean a community that is defined either by generally recognized geographic bounds or by its relationship to an isolated government installation;

(5) "Direct Contributions" shall mean gifts, in cash or in donated in-kind material, given by individuals and/or other non-governmental sources directly to the spending health and welfare organization.

(6) "Indirect Contributions" shall mean gifts, in cash or in donated in-kind material, given to the spending health and welfare organizations by another health and welfare organization, but not transfers, dues or other funds from affiliated organizations or government, which are not to be considered as public "contributions."

(c) The term "Principal Combined Fund Organization" or "PCFO" means the organization in a local Combined Federal Campaign that has been selected and charged pursuant to 5 CFR 950.509 to manage and administer the local Combined Federal Campaign, subject to the direction and control of the local Federal Coordinating Committee and the Director. All of its Campaign duties shall be conducted under the title "Principal Combined Fund Organization for _____ (local CFC)" and not under the corporate title of the qualifying federation.

§ 950.103 Summary description of the program.

(a) *Assigned Campaign Periods.* In the United States, Combined Federal Campaigns are held when set by the Director, usually in the fall; the DOD Overseas Combined Federal Campaign is also usually held during the fall. The

solicitation period for a Combined Federal Campaign is normally limited to six weeks, but may be extended for good cause by the local Federal Coordinating Committee.

(b) *Combined Federal Campaign.* At locations where there are 200 or more Federal personnel, all campaigns must be consolidated in to a single, annual drive, known as the Combined Federal Campaign. The campaign is managed by the organization designated as the Principal Combined Fund Organization, in accord with 5 CFR § 950.509, under the supervision of the local Federal Coordinating Committee and the Director. Such campaigns are conducted under administrative arrangements that provide for allocation of contributions in accordance with specific designations by donors.

(c) *Decentralized Operations.* The federalism principle shall guide Campaign organization. Following designation of a Principal Combined Fund Organization, local representatives of that Organization initiate campaigns in their local community by direct contact with the heads of Federal offices and installations. Each Federal agency conducts its own solicitation among its employees, using campaign materials, supplies, and speakers furnished by or through the Principal Combined Fund Organization, under the direction of the local Federal Coordinating Committee and the Director.

(d) *Solicitation Methods.* Employee solicitations are conducted during duty hours using methods that permit true voluntary giving and reserve to the individual the option of disclosing any gift or keeping it confidential.

(e) *Off-the-job Solicitation.* Many worthy voluntary agencies do not participate in the on-the-job program because they do not wish to join in its coordinated arrangements or because they cannot meet the requirements for eligibility. Such voluntary agencies may solicit Federal employees at their homes as they do other citizens of the community, or appeal to them through union, veteran, civic, professional, political, legal defense, or other private organizations. In addition, limited arrangements may be made for off-the-job solicitations on military installations and at entrances to Federal buildings.

(f) *Prohibited Discrimination.* The Campaign is a means for promoting true voluntary charity among members of the Federal community. Because of the participation of the Government in organizing and carrying out the Campaign, all kinds of discrimination prohibited by law to the Government must be proscribed in the Campaign. Accordingly, discrimination for or

against any individual or group on account of race, color, religion, sex, national origin of citizens, age, handicap, or political affiliation is prohibited in all aspects of management and execution of the Campaign. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this Part to participate in the Campaign, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

§ 950.105 Federal Policy on civil activity.

Federal personnel are encouraged to participate actively in the work of voluntary agencies—as members of policy boards or committees, heads of local campaign units, or volunteer workers—to the extent consistent with Federal agency policy and prudent use of official time. They are encouraged also to devote private time to such volunteer work.

§ 950.107 Preventing coercive activity.

True voluntary giving is basic to Federal fundraising activities. Actions that do not allow free choices or even create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fund-raising policy. The following activities are not in accord with the intent of Federal fund-raising policy and, in the interest of preventing coercive activities in Federal fund-raising, are not permitted in Federal fund-raising campaigns:

- (a) Supervisory solicitation of employees supervised;
- (b) Setting 100% participation goals;
- (c) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;
- (d) Establishing personal dollar goals and quotas;
- (e) Developing and using lists of noncontributors.

Subpart B—Organization and Functional Responsibilities

§ 950.201 Development of policy and procedures.

Director, U.S. Office of Personnel Management. Under Executive Orders No. 12353 (March 23, 1982), Charitable Fund-Raising, and No. 12404 (February 10, 1983), Charitable Fund-Raising, the Director is responsible for establishing charitable fund-raising policies and procedures in the Executive Branch. With the advice of appropriate

interested persons and organizations and of the Executive departments and agencies concerned, he makes all basic policy, procedural, and eligibility decisions for the program. The Director may authorize the conduct of demonstration projects in one or more CFC locations to test alternative arrangements differing from those specified in this part for the conduct of fund-raising activities in Federal agencies.

§ 950.203 Program administration.

(a) *Federal Agency Heads.* The head of each Federal Executive department and agency is responsible for:

(1) Seeing that voluntary fund-raising within the Federal department or agency is conducted in accordance with the policies and procedures prescribed by this Part;

(2) Designating a top-level representative as Fund-Raising Program Coordinator to work with the Director as necessary in the administration of the fund-raising program with the Federal agency;

(3) Assuring full participation and cooperation in local fund-raising campaigns by all installations of the Federal agency;

(4) Assuring that the policy of voluntary giving and clear employee choice is upheld during the fund-raising campaign; and

(5) Providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fund-raising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper organization channels for pursuing such complaints.

(b) *Fund-Raising Program Coordinators.* The responsibilities of Federal agency Fund-Raising Program Coordinators are to:

(1) Cooperate with the Director, the local Federal Coordinating Committee, and the Principal Combined Fund Organization in the development and operation of the program;

(2) Maintain direct liaison with the Office of the Director in the administration of the program;

(3) Publicize program requirements throughout the Federal department or agency;

(4) Answer inquiries about the program from officials and employees and from external sources; and

(5) Investigate and arrange for any necessary corrective action on complaints that allege violation of fund-raising program requirements within the Federal agency.

§ 950.205 Program coordination.

The Director coordinates the Federal agencies' administration of the fund-raising program and maintains liaison with voluntary agencies

§ 950.207 Local voluntary agency representatives.

Federated and national voluntary agencies provide their State and local representatives with policy and procedural guidance on the Federal program. The local representatives are responsible for furnishing educational materials, speakers, and campaign supplies as may be required and appropriate to the Federal program.

§ 950.209 Local Federal agency heads.

The head of the Federal department or agency provides the heads of the local Federal offices and installations with copies of the Federal fund-raising regulations. The local Federal agency heads are responsible for:

(a) Cooperating with representatives of the local Federal Coordinating Committee, the Principal Combined Fund Organization, and local Federal officials in organizing local Federal campaigns;

(b) Undertaking official campaigns within their offices or installations and providing active and vigorous support with equal emphasis for each authorized campaign;

(c) Assuring that personal solicitations on the job are organized and conducted in accordance with the procedures set in these regulations;

(d) Assuring that authorized campaigns are kept within reasonable administrative limits of official time and expense.

§ 950.211 Local Federal coordinating committees.

(a) *Summary of duties and powers.* When there are a number of Federal agency offices and installations in the same local area, some interagency coordination is necessary in order to achieve effective community-wide campaigns and to improve general understanding and compliance with the fund-raising program. The Director assigns the responsibility for local coordination to existing organizations of Federal agency heads whenever possible and to special committees where needed. The local Federal Coordinating Committee is authorized to make all decisions within the provisions and policies established in this Part on all aspects of the local campaign, including eligibility and the supervision of the local community campaign and the Principal Combined Fund

Organization. Such decisions may be appealed, however, to the Director.

(b) *Authorized Local Federal Coordinating Committee.* Coordinating responsibility is assigned by the Director to one of the following organizations:

(1) Federal Executive Boards. The boards exist in principal cities of the United States for the purpose of improving interagency coordination. They are composed of local Federal agency heads who have been designated as Board members by the heads of their departments and agencies under Presidential authority.

(2) Federal Executive Associations and Federal Business Associations, self-organized associations of local Federal Officials, and the Department of Defense National Policy Coordinating Committee.

(3) Fund-Raising Program Coordinating Committee. These committees are established in communities where there is no Federal Coordinating Committee in existence. Leadership in organizing such a committee is the responsibility of the head of the local Federal installation that has the largest number of civilian and uniformed services personnel. Local Federal agency heads or their designated representatives serve on the committee and determine all organizational arrangements.

(c) *Employee union representation.* In order to ensure employee participation in the planning and conduct of the CFC, employee representatives from the principal employee unions of local Federal installations should be invited to serve in whatever organization exercises local coordinating responsibilities.

(d) *Fund-raising responsibilities.* Within the limits of the policies, procedures, and arrangements made nationally, the fund-raising responsibilities of local Federal Coordinating Committees are to:

(1) Facilitate local campaign arrangements. The Federal Coordinating Committee

(i) names a high-level chairman for the authorized Federal campaigns,

(ii) provides lists of Federal activities and their personnel strength,

(iii) cooperates on interagency briefing sessions and kick-off meetings, and

(iv) supports appropriate publicity measures needed to assure campaign success.

(2) Administer program requirements. The Coordinating Committee is responsible for organizing the local Combined Federal Campaign,

supervising the activities of the Principal Combined Fund Organization, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the Federal fund-raising program.

(3) Develop understanding of campaign program policies and procedures and voluntary agency programs. The local Federal Coordinating Committee serves as the central medium for communicating programs, policies and procedures of the Campaign and for understanding the organizations employees are being asked to support and how employees can obtain services they may need from these organizations.

(e) *Principal Combined Fund Organization.* The local Federal Coordinating Committee will supervise a local Principal Combined Fund Organization. The Principal Combined Fund Organization will raise money from Federal employees and administer the local campaign, under the direction of the local Federal Coordinating Committee.

(f) *Communication and resolution procedures through the Director, Office of Personnel Management.* Each local Federal agency head will receive fund-raising directions through his Federal agency channels and will raise questions that pertain to fund-raising activities within his Federal agency by the same means. However, the local Federal Coordinating Committee refers unresolved local fund-raising questions or problems that are common to several Federal agencies directly to the Director. The Director communicates directly with the chairman of the local Federal Coordinating Committee for information about the local fund-raising situation.

(g) *Integrity of local Federal coordinating committee.* A local Federal Coordinating Committee may not serve as a Principal Combined Fund Organization.

(h) *Universal eligibility; local lists; review.* All health and welfare charities organized, qualified, and recognized by the Internal Revenue Service, under 28 U.S.C. 501(c)(3) are eligible to receive designations in any local CFC. The local Federal Coordinating Committee shall permit all such agencies to have an opportunity, as provided in the rules of the Campaign, to receive contributions from Federal employees. At its option, a local Federal Coordinating Committee may publish a list of health and welfare charities eligible to receive contributions through the local CFC. Any such list shall consist of all entities qualifying under 5 CFR 950.101(a) that meet all local eligibility criteria set forth in this Part, including, but not limited to, the

provisions of 5 CFR 950.211(i), and that make timely application for inclusion on the local list. If such a process is provided, then local eligibility decisions shall be made at an open meeting of the local Campaign and upon giving due notice to interested parties. Interested parties denied listing may petition the local Federal Coordinating Committee to reconsider its denial. Such petition for reconsideration may be dismissed as untimely unless it is received by the local Federal Coordinating Committee within ten (10) days after the petitioning party has received actual or constructive notice of the decision of which reconsideration is sought. A petition for reconsideration shall be supported by facts justifying reversal of the original decision. If the local Federal Coordinating Committee unanimously refuses to reconsider its decision, or reconsiders its decision and unanimously affirms the denial of admission, then its decision shall be final. If at least one member of the local Federal Coordinating Committee believes that the decision merits further review, or if the local Federal Coordinating Committee, having received a petition for reconsideration, fails to act thereon within ten (10) days of its actual receipt thereof, then the matter may be appealed, pursuant to the provisions of 5 CFR 950.525(e), to the Director, whose decision shall be final.

(i) *Standards of eligibility for local listing.* Any entity qualifying under 5 CFR 950.101(a), notwithstanding its location or geographic area of service, may receive a gift designated to it in writing on a prescribed CFC pledge card by an individual donor. To be manageable, however, the optional local list, if any, as permitted under 5 CFR 950.211(h), must be limited to charities that actively render their services in the local CFC area. Accordingly, any local list will include only entities that have a direct and substantial presence in the local campaign community, meaning that Federal employees and their families are able to receive, within a reasonable distance from their duty stations or homes, services that are directly provided by the voluntary agency or that demonstrably depend upon, or derive from, the specific research, educational, support, or similar activities of the particular voluntary agency. Demonstration of direct and substantial presence in the local campaign community, including adequate documentation thereof, shall at all times, and for all purposes, be the burden of the voluntary agency. Such direct and substantial presence shall be determined in the light of the totality of the circumstances in each case,

including, but not necessarily limited to, consideration of the following factors:

(1) The availability of services, such as examinations, treatments, inoculations, preventative care, counseling, training, scholarship assistance, transportation, feeding, institutionalization, shelter, and clothing, to persons working or residing in the local campaign community.

(2) The presence within the local campaign community, or within reasonable commuting distance thereof, of a facility at which services are rendered or through which they may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider; or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof.

(3) The availability to persons working or residing in the local campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service.

(4) Awareness within the local Federal community of the existence, activities, and services of the voluntary charitable agency.

Provided, that voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the criteria set forth in this Part except for the requirement of direct and substantial presence in the local campaign community, shall be eligible for inclusion on the local list in each local solicitation area of the Combined Federal Campaign.

§ 950.213 Avoidance of conflicts of interest.

Any Federal employee who serves on the Eligibility Committee, a local Federal Coordinating Committee, or as a Federal agency fund-raising program coordinator, must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

§ 950.301 Types of voluntary agencies.

Voluntary agencies are private, nonprofit, self-governing organizations financed primarily by contributions from the public. Some are national in scope, with a national organization that provides services at localities through

State or local chapters or affiliates. Others are primarily local, both in form of organization and extent of services.

§ 950.303 Types of fund-raising methods.

(a) The methods used by voluntary agencies in public fund-raising shall be either federated or independent. A national *federated* group shall meet the same eligibility criteria as a voluntary agency, and have at least 10 local voluntary agency presences in each of at least 300 local combined campaigns. In federated campaigns, local voluntary agency representatives join contractually into a single organization for fund-raising purposes. A local United Way, united fund, community chest, or other local federated group may be considered and supported as a single agency. Local chapters or affiliates of national agencies may form local federations or be admitted as additional participating members of national federated groups.

(b) An *independent* campaign is one conducted by a local unit of a national voluntary agency through its own fund-raising organization, or by a local non-affiliated agency which otherwise meets established eligibility criteria. Voluntary agencies may conduct independent campaigns or participate in a federation.

§ 950.305 Considerations in making federal arrangements.

(a) *On-the-job Solicitation.* In order to have only one *on-the-job solicitation*, i.e., a Combined Federal Campaign, individual appeals must be combined into a single joint campaign of eligible health and welfare organizations in conformance with the policies and procedures prescribed in this Part.

(b) *Campaign Arrangements Established Nationally.* Basic campaign arrangements are established by the Director. Local Federal agency heads and Coordinating Committees are not authorized to vary from the established arrangements except to the extent that local variations are expressly provided for in this Part.

(c) *Number of Solicitations.* Not more than one *on-the-job solicitation* will be made in any year at any location on behalf of voluntary agencies, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Responsible Conduct.* In the event a voluntary agency fails to adhere to the requirements or to the policies and procedures of the Federal program, solicitation privileges may be withdrawn by the Director at any time after due notice to the voluntary agency and opportunity for consultation.

§ 950.307 Definition of terms used in Federal arrangements.

(a) *Domestic Area.* The 50 United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *Overseas Area.* All other points in the world where Federal employees or members of the uniformed services are stationed.

(c) *Federated Community.* A federated community is a geographical location within the domestic area where a federated fund-raising program exists. In a federated community, recognized national voluntary agencies can join a federated campaign group or participate individually. However, voluntary agencies "supported primarily through United Ways, united funds, and community chests" are authorized to solicit on-the-job in a federated community only as participating members of the local United Way, fund, or chest.

(d) *Local non-affiliated voluntary health and welfare agency.* Local voluntary agencies that provide health and welfare services in the local area, and otherwise meet the criteria of this Part, may be non-affiliated.

§ 950.309 Federated and overseas campaigns.

(a) *Authorized Federated Groups.* (1) United Way of America and any local United Way, united fund, community chest, or other local federated group that is a member in good standing of, or is recognized by, United Way of America and that meets the requirements in these regulations is authorized privileges in its local campaign area on behalf of any of its member voluntary agencies that also meet these requirements. Certifications as to the requirements on behalf of local United Ways, united funds, and community chests and each member voluntary agency will be made by United Way of America.

(2) The American Red Cross, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federated groups which shall meet the standards under this Part, shall be authorized privileges on behalf of their member voluntary agencies that also meet all requirements of this Part.

(3) Member agencies of federated groups are responsible for furnishing to their respective federated groups adequate evidence of their compliance with all requirements of this Part, and federated groups are responsible for ensuring that such adequate evidence is properly furnished and, as needed, revised.

(b) *Local Federated Agencies.* To be eligible for participation in the Federal

fund-raising program, the local federated group must be broadly representative in its board and committee membership of the community and must be making bona fide efforts to meet community needs. Requirements for participation in a local federated group must be in writing, available to the public, reasonable, and applied fairly and uniformly to all local voluntary agencies requesting participation. Procedures must be provided by the federated group for at least one review of any decision denying participation requested by a local voluntary agency. The review must be conducted by a committee or other body within the federated group that did not participate in the original decision. A written statement of the reasons for denial must be provided to the applicant voluntary agency.

(c) *"Causes."* Solicitation for a health or other "cause," e.g., for "Mental Health" or "Heart Disease," without identification of the specific voluntary agency for which the funds are sought, is not authorized. All funds collected from Federal personnel must be allocated only to specific voluntary agencies.

(d) *Designation of Federated Area.* The recognition of a local Federal Coordinating Committee by the Director designates the community served by that Committee as a recognized local campaign site. Two or more authorized local Federal Coordinating Committees are authorized to develop coordinated solicitations best suited to the needs of their localities.

(e) *Overseas Campaign.*—(1) *DoD Overseas Combined Federal Campaign.* (i) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a six-week period in the fall. Any national voluntary agency which, in the opinion of the local Federal Coordinating Committee for the DoD overseas CFC, comes closest to meeting the definition of a federation is eligible to become its Principal Combined Fund Organization.

(ii) Contributors to the DoD Overseas Combined Federal Campaign designate their gifts to one or more agencies or the Principal Combined Fund Organization. The Principal Combined Fund Organization for the overseas campaign shall pay the amounts collected directly to the designated voluntary agencies, less "shrinkage" and the processing fee, if any, that is approved in advance of the campaign by the Federal official in the overseas area responsible for the local campaign arrangements.

(2) *Local Voluntary Agency Campaigns.* The heads of overseas

offices and installations may, at their discretion, permit the solicitation of their military and civilian personnel for local voluntary agencies. Such campaigns will be conducted in accordance with the basic policies and procedures of the Federal program and at times which do not conflict with the DoD overseas Combined Federal Campaign period. The standards in this Part will be used as guidelines. Federal leadership in organizing such campaigns will be assumed by the head of the overseas Federal establishment that has the largest number of Government personnel in the campaign area.

(3) *Optional Participation by Certain Civilian Agencies.* Federal civilian departments and agencies that have traditionally considered their overseas personnel as members of the National Capital Area for fund-raising purposes may continue this practice.

(4) *On-Base Health and Welfare Activities.* On-base morale, welfare and recreational activities may be supported from CFC funds.

§ 950.311 Off-the-job solicitation at places of employment.

Voluntary agencies that are not recognized for the on-the-job program may be authorized off-the-job solicitation privileges at places of Federal employment under such reasonable conditions as may be specified by the local head of the Federal installation involved, provided that such conditions are not inconsistent with this Part. Dual solicitation is not authorized, so this privilege cannot be made available to any voluntary agency that is included in the on-the-job program.

(a) *Family Quarters on Military Installations.* Voluntary agencies may be permitted to solicit at private residences or at similar on-post family public quarters in unrestricted areas of military installations at the discretion of the local commander. However, such solicitation may not be conducted by military or civilian personnel in their official capacity during duty or non-duty hours, nor may such solicitation be conducted as an official command-sponsored project. This restriction is not intended to prohibit or to discourage military and civilian personnel from participating as private citizens in voluntary agency activities during their off-duty hours.

(b) *Public Entrances of Federal Buildings and Installations.* Voluntary agencies that engage in limited or specialized methods of solicitation—for example, the use of "poppies" or other similar tokens by veterans organizations—may be permitted to

solicit at entrances or in concourses or lobbies of Federal buildings or installations normally open to the general public. Solicitation privileges will be governed by the rules issued by the General Services Administration pursuant to the Public Buildings Cooperative Use Act of 1976 or later modification, or other applicable Government legal authority.

Subpart D—Requirements for National Agencies

§ 950.401 Purpose.

These requirements are established to ensure that the funds contributed by Federal personnel will be used for the stated purposes of the soliciting voluntary agencies.

§ 950.403 General requirements.

(a) *Type of Agency.* Only nonprofit, tax-exempt, charitable organizations, supported by voluntary contributions from the general public and providing direct and substantial health and welfare and services through their national organization, affiliates or representatives are eligible for approval. All such services must be consistent with the policies of the United States Government.

(b) *Integrity of Operations.* Funds contributed to such organizations by Federal personnel must be effectively used for the announced purposes of the voluntary agency.

(c) *National Scope.* A national voluntary agency is one that:

(1) Is organized on a national scale with a national board of directors that represents its constituent parts, and exercises close supervision over the operations and fund-raising policies of any local chapters or affiliates.

(2) Has earned goodwill and acceptability throughout the United States, particularly in cities or communities within which or nearby are Federal offices or installations with large numbers of personnel.

(3) Has national scope, that is, scale, goodwill, and acceptability; this may be demonstrated as follows:

(i) By a voluntary agency's provision of a service in many (c. one quarter) States, or in several foreign countries, or in several parts of one large foreign nation;

(ii) By derivation of contributor support from many parts of the Nation;

(iii) By the extent of public support and the number and the geographical spread of contributors; and

(iv) By the national character of any public campaign, which may be shown by an applicant having at least 200 local

chapters, affiliates, or representatives that promote its campaign.

(d) *Type of Campaign.* Approval will be granted only for fund-raising campaigns in support of current operations. Capital fund campaigns are not authorized.

§ 950.405 Specific requirements.

(a) *Corporate and Tax Status.* A voluntary agency must be one:

(1) That is a voluntary charitable health and welfare agency as defined in 5 CFR 950.101;

(2) That is voluntary and broadly supported by the public, meaning (i) that it is organized as a not-for-profit corporation or association under the laws of the United States, a State, a territory, or the District of Columbia; (ii) that it is classified as tax-exempt under 26 U.S.C. 502(c)(3), and is eligible to receive tax deductible contributions under 26 U.S.C. 170; and (iii) that, with the exception of voluntary agencies whose revenues are affected by unusual or emergency circumstances, as determined by the Director, it has received at least 50 percent of its revenues from sources other than the Federal Government or at least 20 percent of its revenues from direct and/or indirect contributions in the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign;

(3) That is directed by an active board of directors, a majority of whose members serve without compensation; that adopts and employs the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations*; that prepares and makes available to the general public an annual financial report prepared in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and is certified by an independent certified public accountant; that provides for an annual external audit by an independent certified public accountant;

(4) That can demonstrate, if its fund-raising and administrative expense is in excess of 25 percent of total support and revenue, that its actual expense for those purposes is reasonable under all the circumstances in its case;

(5) That ensures that its publicity and promotional activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts.

(b) *Fund-Raising Practice.* The voluntary agency's publicity and promotional activities must assure protection against unauthorized use of

its contributors lists; must permit no payment of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fund-raising; and must permit no general telephone solicitation of the public.

(c) *Reports.* (1) *Annual Report.* The voluntary agency must prepare an annual report to the general public that includes a full description of the voluntary agency's activities and accomplishments and the names of chief administrative personnel.

(2) *Combined Reports.* Voluntary agencies which represent more than one subunit must prepare a combined annual financial report to the general public in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations*. The combined report shall include all income and expenditures for the national operations and all chapters, committees, affiliates, or satellites.

(d) *Reporting by American Red Cross.* For purposes of this Part, the American Red Cross and its chapters are recognized as operating an accounting and financial system in substantial compliance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and certification to this effect by local chapters is not required.

Subpart E—The Local Combined Federal Campaign

§ 950.501 Local voluntary agencies.

(a) A local voluntary agency shall meet the same criteria as a national voluntary agency, except national scope.

(b) An on-base morale, welfare and recreational activity authorized by a military base commander may be supported from CFR funds.

§ 950.503 Participation in Federal campaigns by local affiliated agencies.

Arrangements shall be made by the Central Receipt and Accounting Point to distribute contributions to voluntary agencies, after appropriate adjustments are made for "shrinkage" and approved administrative costs.

§ 950.505 Responsibility of local Federal coordinating committees.

Each local Federal Coordinating Committee is required to organize a Combined Federal Campaign in the local area for which it has fund-raising responsibility. The heads of Federal departments and agencies will request their local officials to cooperate fully with the decisions of the Federal Coordinating Committee in all aspects of CFC arrangements. The local Federal Coordinating Committee makes all final

decisions on the local campaign, subject to appeal to the Director.

§ 950.507 Local CFC plan.

(a) *CFC as uniform fund-raising method.* The Combined Federal Campaign is the only authorized fund-raising method in all areas in the United States in which 200 or more Federal employees are located. All voluntary agencies wishing to participate in fund-raising within the Federal service must do so within the framework of a local Combined Federal Campaign.

(b) *Non-participation.* In the event that any voluntary agency does not follow these regulations for participation in a local CFC, fund-raising privileges in local Federal establishments are forfeited during that fiscal year.

(c) *Red Cross participation.* In local communities where the American Red Cross is not a participating member of the local United Way, it will be regarded as a separate campaign organization in the combined campaign. American Red Cross chapters have independent authority with respect to fund-raising policy, so responsibility for deciding on participation in CFC rests with the local chapter board of directors. As with the other national organizations, in the event local American Red Cross chapters choose not to participate in CFC, they are not authorized to have a separate campaign in local Federal offices or installations during the fiscal year involved, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Exceptions in areas of fewer than 200 Federal employees.* Where there are fewer than 200 Federal employees in the local campaign area, it may not be practicable to hold a Combined Federal Campaign. Therefore, in such areas local Federal officials are not required to arrange for a Combined Federal Campaign. However, if they believe it would be desirable from the standpoint of the local community or the Federal Government to have such a campaign, they may contact the Director to arrange a Combined Federal Campaign regardless of the number of employees involved. Where a CFC is not conducted because of lack of sufficient Federal employees, the local united fund is authorized to solicit within the Federal establishment during the fall of the year and other Federated groups are authorized to conduct a separate spring campaign. Where the American Red Cross is not a member of the local united fund and the area will not have a CFC, then the Red Cross may conduct an independent campaign during the month of March. However, payroll

deductions for charitable contributions are only authorized in conjunction with Combined Federal Campaigns.

§ 950.509 Organizing the local campaign: The principal combined fund organization.

The Local Federal Coordinating Committee shall organize the local community campaign. It will appoint a campaign chairman who will carry out campaign duties in conformance with the policies and procedures prescribed in this Part. From among the federations with national scope, the local Federal Coordinating Committee shall select a Principal Combined Fund Organization to manage the campaign and to serve as fiscal agent. In doing so the Federal Coordinating Committee shall select whichever applicant organization it finds to be the local federated group in the CFC geographic area that provides through one specific, annual public solicitation for funds the greatest support for charitable agencies that depend on public subscriptions for support; that, in the judgment of the Federal Coordinating Committee, can most effectively provide the necessary campaign services and administrative support for the successful Campaign.

(a) In deciding whether an organization is the Principal Combined Fund Organization in the CFC geographic area, the Federal Coordinating Committee will consider:

(1) The number of local charitable voluntary agencies or affiliates in the CFC geographic area that rely on the applicant organization for financial support and that meet the prescribed eligibility criteria for participation in the CFC;

(2) The number of dollars raised by the applicant organization in the CFC geographic area during its last completed annual public solicitation for funds;

(3) The percentage of such dollars disbursed to the charitable voluntary agencies;

(4) The local capacity of the applicant organization to provide the necessary campaign services and administrative support (including operation of the Central Receipt and Accounting Point) to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this Part; and

(5) Whether the organization is a national voluntary agency as specified in 5 CFR 950.401, 950.403, and 950.405.

(b) An organization seeking to be designated the Principal Combined Fund Organization in a CFC area shall submit its application for such designation to

the local Federal Coordinating Committee for approval. All such applicants must pledge to manage the campaign fairly and equitably; to conduct organization operations separate from other voluntary agency operations; to consider advice from, be responsible to reasonable requests for information from, and to consult with other agencies; and to be subject to the decisions and supervision of the local Federal Coordinating Committee and the Director. Upon submission of a complaint by a local Federal Coordinating Committee or a federated or national voluntary agency, the Director may revoke the designation as a Principal Combined Fund Organization if in his discretion he finds these pledges are not fulfilled.

(c) Applications shall include the following:

(1) The names of the voluntary agencies in the area that rely on the applicant organization for financial support and that meet the eligibility criteria set in this Part;

(2) The boundaries of the area covered by the public donation solicitation of the applicant organization;

(3) The number of dollars raised in the CFC geographic area by the applicant during its last completed annual public solicitation for funds;

(4) The percentage of such dollars disbursed to the charitable agencies;

(5) Agreement to transmit contributions, as designated by Federal employees, to charitable organizations approved for participation and listing in the local CFC (minus only "shrinkage"—that is, uncollectible pledges and gifts—and the approved fee for administrative cost reimbursement);

(6) Certification that it, and its participating member organizations, are in compliance with all applicable requirements specified in this Part;

(7) Fee, if any, proposed to be charged by the applicant organization for reimbursement for administrative costs; and

(8) Statement that the applicant organization is organized to provide the necessary campaign services and support to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this Part.

(d) Federated groups, member agencies of federations, and other voluntary agencies shall be eligible to receive designations.

(e) The Principal Combined Fund Organization shall provide a form for the employee to indicate any amounts he may wish to designate to affiliated

and non-affiliated beneficiaries. The Principal Combined Fund Organization shall pay the amount collected to the employee-designated beneficiary agency less "shrinkages" and the amount necessary to reimburse the Principal Combined Fund Organization for administrative expenses.

(f) The fee, if any, charged for administrative cost reimbursement must be approved in advance by the local Federal Coordinating Committee and published in the campaign literature.

(g) All contributions not designated to specific voluntary agencies or specific federated groups shall be deemed to have been designated to the Principal Combined Fund Organization. A statement of that fact shall be clearly printed in a distinctive typeface in ink of a distinctive color on the face of each pledge card, which shall also state the name of the federated group that is the Principal Combined Fund Organization in that local Campaign.

(h) The Principal Combined Fund Organization shall issue a report to the local Federal Coordinating Committee within a reasonable time following the campaign setting forth the following information:

(1) Amounts contributed and pledged,

(2) Number of contributors,

(3) Amounts designated to each participating federated group and voluntary agency,

(4) Amount designated to the Principal Combined Fund Organization, and

(5) Costs of administering the campaign, including the Central Receipt and Accounting Point.

(i) *CFC Committee.* Where necessary, the local Federal Coordinating Committee may designate a committee from among its principal members, called the CFC Committee, to give top leadership and direction to the planning, conduct and evaluation of the local combined campaign. The Federal Coordinating Committee, however, may not redelegate any final authority for the campaign to the CFC Committee. The Chairman of the Campaign need not be the Chairman of the organization designated as the local Federal Coordinating Committee.

(j) *Action Steps by the Local Federal Coordinating Committee.* The Chairman of the local Federal Coordinating Committee is not authorized to establish a Local Joint Work Group of Federal representatives and representatives of the Principal Combined Fund Organization. The Chairman shall direct the Principal Combined Fund Organization to assemble necessary information and data, and to submit a plan detailing materials and a timetable for campaign arrangements. This shall

include the dates for preparation, printing and distribution of materials, kick-offs, training sessions, report meetings and award ceremonies. All of these, including the specific materials to be used, shall be submitted to the full local Federal Coordinating Committee for approval on a day to be announced broadly to participating voluntary agencies and federated groups and to the Director. An adequate opportunity shall be provided for participating federated groups and voluntary agencies to review and comment on all proposals.

(k) *Loaned Executive Program.* One or more loaned Federal executives may be used in a Combined Federal Campaign. The Loaned Executive Program was authorized by President Nixon in a memorandum to heads of departments and agencies dated March 3, 1971. A Loaned Executive may be detailed from his agency on a full or part-time basis, for a specific period of time, to conduct or assist in the operation of a Combined Federal Campaign. The employing agency will decide who will serve as a Loaned Executive, if anyone, and the length of the detail. Executives may not be loaned or assigned to any specific voluntary organization but only to the official Combined Federal Campaign group. When assigned to the CFC, the executive shall be placed on administrative leave.

§ 950.511 Basic local CFC ground rules.

(a) The arrangements outlined in 5 CFR 950.511 through 950.525 constitute basic ground rules for the local Combined Federal Campaign. Certain local variations are permissible if specifically authorized in this Subpart. However, any modification of ground rules in specific instances must be requested by Federal Coordinating Committees from the Director. Modifications will be granted only in the most exceptional circumstances.

(b) The local Federal Coordinating Committee will approve the:

(1) *Campaign Name.* The name will include the words "Combined Federal Campaign," the year for which contributions are solicited; and approximate identification of the locality; as for example: "1984 San Antonio Area Combined Federal Campaign."

(2) *Campaign Period.* The solicitation period may be any time between September 1 and November 30.

(3) *Campaign Area.* The exact geographical area to be covered by a local campaign will be determined by the Director, taking into account past practice and the feasible scope for a single, coordinated campaign. The

jurisdiction of the organization named as the local Federal Coordinating Committee will set the basic area of the Campaign, based upon past practices. Any changes in campaign area must be approved by the Director.

§ 950.513 Contributions.

(a) The contributor's information leaflet will clearly state that the Federal employee is encouraged to direct his gift to specific voluntary agencies. A single form of pledge card and leaflet-brochure will be produced under standards set in this Part, and approved by the Director. The leaflet will explain that when such gifts are earmarked to a specific recipient, the Principal Combined Fund Organization will remit such funds, less approved administrative costs, in accordance with the donor's wishes as those funds are collected. The leaflet will also clearly state that when the Federal employee decides not to designate, the gift will be deemed designated to the Principal Combined Fund Organization for distribution by it. The leaflet should contain no text stating or implying that any Government official will determine the distribution of any gifts deemed designated to the Principal Combined Fund Organization.

(b) Several boxes will be provided on the pledge form so that donors may indicate their choices, if any, to contribute to one or more voluntary agencies. A minimum of three (3) boxes, each no less than 1½ inches in length and not less than ¼th of an inch in height, will be printed on the face, and on all copies, of the pledge card. Separate designation slips are not authorized under any circumstances. The pledge card must be arranged so that each Federal employee receives the pertinent CFC information and the pledge card as a single package (as examples, inserted in a slot, or a pocket in the contributor's information leaflet). In addition to the statement required by 5 CFR 950.509(g), a statement in bold and distinctive type will be printed to read: "Any health and welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated in the box provided on this card."

(c) In the event that a donor attempts to contribute to an entity that is not a voluntary agency within the meaning of 5 CFR 950.101(a), that is not tax-exempt under 26 U.S.C. 501(c)(3), or that cannot, with minimal reasonable effort, be identified or located, then the donation shall be cancelled and the funds collected, if any, shall be promptly returned to the donor.

§ 950.515 Dollar goals.

(a) A dollar goal for the overall combined campaign is recommended. Generally, it provides a focus for group spirit and unity of purpose that contributes materially to success. By apportioning the goal equitably among the Federal offices and installations, each Federal agency shares responsibility in the team effort and has a mark with which to gauge its progress.

(b) In developing the proposal goal, the local Federal Coordination Committee should take into account past giving experience in local Federal campaigns, the needs and reasonable expectations of the voluntary agencies in the current campaign situation, and the probability of a substantial increase in the level of giving due to the single campaign and payroll payment plan. The objective should be to set a goal that is attainable, which can be exceeded in an enthusiastic and purposeful campaign.

(c) Dollar goals are not required. An alternative approach is to rely on "suggested giving" as the principal incentive. For example, the "goal" could be 75 percent participation at the suggested giving level.

§ 950.517 Suggested giving guides and voluntary giving.

(a) Suggested giving guides for contributions are authorized for local construction. Guides for cash giving or direct-payment pledges may be included in terms of percent of annual income, number of hours pay, or suggested size of gift in relation to various income levels. Guides may be printed in the contributor's leaflet or on the pledge form. They will be accompanied by a statement explaining that the guide is provided because employees often ask for one, but that the decision to give and the amount is up to each employee.

(b) Federal agencies are not authorized to furnish individual employee suggested giving guides based upon the employee's specific pay or grade; a guide of this kind is comparable to an individual quota or assessment, which is prohibited.

(c) The contributor's leaflet or the pledge form must include the express statement that the employee has the right to make his gift confidentially in a sealed envelope which will be delivered unopened to the Combined Federal Campaign headquarters.

§ 950.519 Central receipt and accounting for contributions.

(a) The Principal Combined Fund Organization shall provide and administer the Central Receipt and Accounting Point or it may arrange for

an appropriate financial institution to provide such service on its behalf, under the direction of the local Federal Coordinating Committee. Any charges by such institution to provide the necessary services are the responsibility of the Principal Combined Fund Organization and should be included in the latter organization's administrative costs factor.

(b) The central accounting point will tabulate all contributions designated to specified agencies on the pledge cards and then tabulate the contributions designated to the Principal Combined Fund Organization. The amounts payable to the specified voluntary agencies are subject to deduction "shrinkage" and of the approval percentage, if any, for reimbursement of administrative costs to the Principal Combined Fund Organization.

(c) Provision must be made by the Principal Combined Fund Organization for the audit of CFC funds. If the CFC is over \$100,000, an audit must be performed by a certified public accountant who is independent of the auditor of the Principal Combined Fund Organization. Copies of the audits must be submitted to appropriate local Federal officials and made available for inspection by any voluntary agency or federation participating in the CFC.

(d) In addition to the usual method of cash contribution and direct payment of pledges, the use of voluntary payroll withholding is authorized for members of the uniformed services and civilian personnel at CFC locations. Local voluntary agencies may decide whether or not to provide for direct payment of pledges; however, cash contributions must be permitted. Keyworker collection of installment pledges is prohibited.

§ 950.521 Campaign and publicity materials.

(a) Campaign and publicity materials will be developed in the local area under direction of the local Federal Coordinating Committee, and will be printed and supplied by the Principal Combined Fund Organization. All disputes over materials will be resolved by the local Federal Coordinating Committee, except that failure to follow this Part other directive of the Director may be appealed to the Director. All publicity materials must have the approval of the local Federal Coordinating Committee before being used.

(b) Distribution of any bona fide education material of the voluntary agencies or provision of other services to employees at Federal establishments must be handled through the Federal

agency occupational health units, and not the CFC coordinators. While there is no intent to restrict the normal educational or service activities that voluntary agencies provide in Federal agencies, no special distribution of materials or services should be planned within Federal facilities during the campaign, giving undue publicity to a particular voluntary agency or category of voluntary agencies during the campaign period. Violation of this requirement by any voluntary agency may be grounds for the local Federal Coordinating Committee to disqualify the voluntary agency from further participation in the local CFC for that year after due notice to the voluntary agency concerned. However, voluntary agencies are encouraged to publicize their activities outside Federal facilities, and to broadcast messages aimed at Federal employees in an attempt to solicit their contributions, through media and other outlets, as long as these do not interfere with Federal Government activities.

(c) A single Contributor's Information Leaflet, and a single, joint Pledge Form and Payroll Withholding Authorization (the latter preferably to be placed in an insert slot or otherwise assembled in the former) are to be distributed by keyworkers to each potential contributor. The Pledge Form and Payroll Withholding Authorization must be one form. All CFC literature, keyworker solicitors, and materials released as a part of the campaign must inform employees of their right to make a choice. Employees will be informed that while the Federal Government encourages its employees to make a choice, it does not mandate that they choose.

(d) Campaign materials must constitute a simple and attractive package that has fund-raising appeal and essential working information. Treatment should focus on the combined campaign and homogeneous appeal without undue use of voluntary agency symbols or other distractions that compete for the contributor's attention. Extraneous instructions concerning the routing of forms, tallying of contributors, etc., which are primarily for keyworkers, must be avoided.

(e) Specific campaign and publicity materials: (1) Contributor's Leaflet.

(i) This will be the only informational material distributed to individual contributors. It will describe the CFR arrangement, explain the payroll deduction privilege, and will include the information required by 5 CFR 950.513. The leaflet should be constructed to contain a pocket or a slot to hold the CFC pledge card.

(ii) The leaflet will provide instructions about how an employee may obtain more specific information about voluntary agencies participating in the campaign, their programs, and their finances. It will also inform employees of their right to pursue complaints of undue pressure or coercion in Federal fundraising activities. The leaflet will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization handling such complaints in their respective Federal agency.

(iii) A Privacy Act notice must be printed on the leaflet.

(iv) The contributor information leaflet must state that any health or welfare agency organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3), is eligible for a contribution; that the contributor must clearly identify the beneficiaries and amounts of his gifts; that his gifts are tax deductible; that he has the right not to be improperly influenced in making his decisions regarding the making or withholding of contributions in the CFC; and that he must make his gifts, if any, using the prescribed CFC contribution pledge card. The contributor information leaflet shall not contain the name of any voluntary charity nor shall it otherwise contain any material that might influence the donor's choice of particular beneficiaries. The leaflet may contain general words of encouragement of the support of private charity, including quotations of the President of the United States, the Director, other Federal officials, and prominent personalities, provided that no personality who is not a Federal official shall be featured in the leaflet if he would be, under all the circumstances, reasonably associated by a donor with any particular voluntary agency.

(2) At its option, the local Federal Coordinating Committee may include a list of voluntary agencies. This will strictly be at its own option if, in its view, it would facilitate donor understanding. If this option is chosen, the following rules apply:

(i) The brochure will list the voluntary agencies approved by the local Federal Coordinating Committee, with only the title of the organization printed and without any statement about, or on behalf of, any agency. Opposite the name of each voluntary agency, a number will be provided beginning with the number 101 so that contributors desiring to indicate a choice of an agency or agencies to whom they wish their gift to be directed may insert such

number or numbers in the designation boxes provided for that purpose on the pledge card. Each voluntary agency which is a member of a federated group shall be entitled, at its local option, to have that group's initials noted in parentheses following the name of the voluntary agency.

(ii) The listing of voluntary agencies shall be exclusively in alphabetical order by name of voluntary agency.

(iii) Federated groups shall be listed, in an order set by lot each year, at the end of the list of voluntary agencies, under the title "campaign groups," with the identification numbers keyed to numbers of the participating federated groups. The federated groups that is the Principal Combined Fund Organization will be so identified.

(iv) The following statement shall be printed, following the list of federated groups, in bold letters and distinctive type: "The above list is not an exhaustive list of the voluntary health and welfare charities to which you may designate all or part of your contribution. The list is illustrative only. Any health or welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated on the blank space provided on the pledge card. You must write the full and correct name of the charity to whom you designate your gift. Please be sure that your writing is legible. If you write in the name of an unqualified organization or of an organization that cannot be located, or if your writing cannot be read, then your pledge or gift will be cancelled and returned to you."

(v) Every leaflet shall also contain the following statement printed after the lists and after the statement required by 5 CFR 950.521(e)(2)(iv): "All contributions not designated to specific voluntary agencies, or specific federated groups, shall be deemed to have been designated to the Principal Combined Fund Organization, which shall, through its eligibility committee of local citizens, choose charities to receive these funds based upon its best perception of community, national and international needs."

(3) Pledge form and payroll withholding authorization.

(i) The first copy of the pledge form shall be used to inform the Central Receipt and Accounting Point for the local area of the designation decisions. The format for the pledge card is set by the Director and is available from the Office of Personnel Management.

(ii) One copy of this form will be used as the Payroll Withholding Authorization. When completed, this

copy will go to the contributor's payroll office. Since there are some 1,400 separate payroll offices serving Federal personnel, the withholding authorization must be in a standard format and bear adequate identification of the local campaign.

(iii) The name and mailing address of the local CFC Central Receipt and Accounting Point will be printed at the top of the form. The name must be the same as that for the campaign and include the year: for example, "1984 San Antonio Area Combined Federal Campaign."

(iv) The box entitled "Identification No." will be used for the contributor's Social Security Number, except in the case of Federal agencies that have a separate payroll identification numbering system. There is no requirement to use this space and it should only be used when it aids in accounting or campaign management.

(f) Other campaign materials that are authorized include:

(1) *Chairman's Guide*. For use of campaign chairmen in individual Federal installations;

(2) *Keyworker's Guide*. Instructions for keyworkers about CFC arrangements, solicitation methods, and forwarding procedures;

(3) *Keyworker's Report Envelope*. With tally sheets (which may be printed on the envelope) on which the keyworker will list the names of contributors or the number of confidential envelopes enclosed;

(4) *Miscellaneous Campaign Items*. Contributor's receipts, window stickers, posters, progress charts, awards, etc.;

(5) *Publicity Items*. News stories and fillers for the local press and house organs, employee letters, speeches of campaign leaders, division chairmen, films, television and radio material supporting the campaign; and

(6) *Awards*. To recognize campaign achievements by Federal agencies, Federal agency chairmen, etc. Awards should be identified as "Combined Federal Campaign" awards. The presentation of awards and plaques by individual voluntary agencies or categories of voluntary agencies for CFC accomplishments is not permitted.

(g) National materials provided and made available for use by local CFCs will be developed by an organization named by the Director. The Director will provide opportunity for comment on such materials by interested parties prior to approval. He must approve all material prior to use.

§ 950.523 Payroll withholding.

The following policies and procedures are authorized for payroll withholding

operations in accordance with Office of Personnel Management regulations in 5 CFR Part 550, Pay Administration.

(a) *Applicability*. Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local Combined Federal Campaign organizations.

(b) *Allotment*. The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a combined Federal Campaign when an appropriate official of the employing Federal agency determines the employee will continue his employment for a period sufficient to justify an allotment. (This includes part-time and intermittent employees who are regularly employed.)

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months). (The Department of Defense has modified its military pay allotment regulations to authorize allotments for CFC charitable contributions by uniformed service members.)

(c) *Authorization*. (1) Allotments will be wholly voluntary and will be based upon contributors' individual written authorizations.

(2) Authorization forms in standard format will be printed by the Principal Combined Fund Organization at each location. The forms and other campaign materials will be distributed to employees when charitable contributions are solicited.

(3) Completed authorization forms should be transmitted to the contributors' servicing payroll offices as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by payroll offices.

(d) *Duration*. Authorizations will be in the form of a term allotment for one full year—26, 24 or 12 pay periods depending upon the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. (The standardization of beginning and ending dates, except for individual discontinuances, is intended to simplify payroll operations and minimize costs.) However, the fact that an employee or military member will not be on duty for the full year should not preclude acceptance of a payroll allotment if he has sufficient time in service remaining to make the allotment practicable. Three months or more

would be considered a reasonable period of time for which to accept and allotment.

(e) *Amount*. (1) Allotments will make a single allotment which is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount for allotment will be determined by the local Federal Coordinating Committee but will be not less than \$1.00 by-weekly, with no restriction on size of increment above the minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) For the purpose of simplicity and economy in payroll operations, no deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustment will be made in subsequent periods to make up for deductions missed.

(f) *Remittance*. (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Central Receipt and Accounting Point at each location for which the payroll office has received allotment authorizations.

(2) The check will be accompanied by a statement identifying the agency and the number of employee deductions. There will be listing of allotments included or of allotter discontinuances.

(g) *Discontinuance*. (1) Allotments will be discontinued automatically:

(i) On expiration of the one-year withholding period;

(ii) On death, retirement, or separation of allotter from the Federal service.

(2) The allotter may revoke his authorization at any time by requesting it is writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer*. (1) When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different department or agency, his allotment authorization will be transferred to the new payroll office.

(2) When there is a delay in receiving the transferred authorization in the new payroll office, or when the allotter moves to a location covered by another CFC, the allotter should be permitted to complete a new authorization for the remainder of the one-year withholding period, which will supersede and revoke his previous authorization.

(3) When the allotter moves to a location not covered by a CFC, the allotment will automatically be terminated unless expressly continued by the individual.

(i) **Accounting.** (1) Federal payroll offices will oversee establishment of individual allotment accounts, deductions each pay period, and reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittance, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The Principal Combined Fund Organization is responsible for the accuracy of transmittal of contributions. It shall transmit at least monthly for campaigns of \$100,000 or more or quarterly if less than that amount, minus only the shrinkage factor and approved fee for administrative cost reimbursement. It shall remit contributions, less approved administrative costs and shrinkage, to each agency or to the federated group, if any, of which the agency is a member if all member agencies of that federated group, participating in the local campaign, agree. It shall notify the federated groups, as soon as practicable after the completion of the campaign (but in no case more than 60 days thereafter), of the amounts, if any, designated to them and their member agencies and of the amounts of deemed-designated contributions, if any, allocated to them and their member agencies.

(3) Federated and national voluntary agencies, or their designated agents, will accept responsibility for: (i) The accuracy of distribution among the voluntary agencies of remittances from the Principal Combined Fund Organization; and (ii) Arrangements for independent audit agreed upon by the participating voluntary agencies.

§ 950.525 National coordination and reporting.

(a) The Office for Regional Operations, U.S. Office of Personnel Management, is responsible under the Director for CFC arrangements.

(b) All local coordinating committees are required to notify the Office for Regional Operations of their campaign areas, their chairman's name and address, and the address of their Central Receipt and Accounting Point.

(c) All chairmen of local Federal Coordinating Committees are required to furnish reports of campaign results to the Office of Regional Operations by January 15 of each year. A reporting

format will be furnished to CFC locations prior to that date requesting information on the results of the campaign, including the following:

- (1) Basic data (number solicited, number of contributors);
- (2) Payroll deductions (number authorizing, total pledged);
- (3) Designations;
- (4) Amount of undesignated receipts received by Principal Combined Fund Organization;
- (5) Campaign costs; and
- (6) Narrative summary evaluation of CFC arrangement based upon campaign experience. A copy of the report will be furnished to the local Federal Coordinating Committee, the Principal Combined Fund Organization, and a copy will be made available for inspection by other participating voluntary agencies and federated groups.

(d) All local activities will be coordinated with the national campaign under procedures issued by the Director through the Federal Personnel Manual system and a handbook of instructions (or other appropriate issuance) for use by participating voluntary organizations.

(e) Any decision of a local Federal Coordinating Committee that is appealed to the Director by any charitable agency or charitable federated group shall be given due weight by the Director. Any such appeal shall be looked upon with disfavor unless it raises a substantial question of fairness, construction of these regulations, or application of the policies, procedures, directives, and guidance of the Director. Unless the Director orders otherwise, all burdens of proof, of persuasion, and of going forward shall be borne by the appellant. An appeal may be dismissed as untimely unless it is received by the Director within the ten (10) days next following after the appellant has received actual or constructive notice of the decision from which the appeal is taken. Every appeal shall be submitted in writing; shall set forth a concise statement of the decision from which the appeal is taken, the grounds for the appeal, and the relief sought by the appellant; and shall be accompanied by written proof that copies thereof have been served upon the local Federal Coordinating Committee and any other proper party in interest whose participation in the appeal may be appropriate for the just disposition thereof. The local Federal Coordinating Committee and any other proper party in interest may respond to the appeal. Every response, to be timely, shall be received by the Director within the five (5) days next following after the

respondent has received actual or constructive notice of the appeal. Every response shall be submitted in writing; shall set forth a concise statement of the facts and arguments that the respondent believes are material; and shall be accompanied by written proof that copies thereof have been served upon the appellant any other proper party in interest. The Director may, for good cause, extend or shorten the time limits herein set forth and waive requirements for written submissions and proofs of service. The Director may, in his sole discretion, review any decision of a local Federal Coordinating Committee and stay any decision of a local Federal Coordinating Committee pending his review thereof. All decisions of the Director shall be final, and shall be executed forthwith by the local Federal Coordinating Committee or by such other person or entity as the Director may direct to do so.

[FR Doc. 84-0992 Filed 4-12-84; 8:45 am]

BILLING CODE 5325-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: SBA proposes to amend its regulations to provide for the imposition of a user fee on Small Business Investment Companies (SBICs) whose debentures are purchased or guaranteed by SBA.

The user fee will be a one-time fee equal to a percentage of the par value (face amount) of debentures purchased or guaranteed by SBA. In the case of debentures that are to be purchased or guaranteed by SBA to refund maturing obligations, the user fee must be tendered to SBA prior to the purchase or guaranty. In other cases, the user fee will be deducted from the remittance due the issuing SBIC. No part of the fee will be refunded in the event of prepayment, whether such prepayment is voluntary or not.

The user fee is intended to cover the administrative expenses incurred by SBA in connection with the processing of applications for the purchase or guaranty of SBIC debentures, with the sale of SBIC debentures, and with the subsequent servicing of such debentures.

Imposition of such fee is authorized by Section 303(b) of the Small Business Investment Act.

Imposition of a user fee is not intended to change the definition of "FFB Rate", as set forth in § 107.3. Although SBA proposes to amend the definition of "FFB Rate" the purpose of the amendment is to insure that the term retains its original meaning.

DATES: Effective Date: If adopted as a final rule, this proposal will become effective immediately upon publication as a final rule; and the fees promulgated thereunder would become applicable to all debentures purchased or guaranteed on or after that date, regardless of when the leverage request had been made.

Comment Date: Comments must be received on or before June 12, 1984.

ADDRESS: Written comments, in duplicate, are to be addressed to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert G. Lineberry, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, 202-653-6848.

SUPPLEMENTARY INFORMATION: The proposal to impose a user fee is in conformity with a recommendation of a task force on the President's Private Sector Survey on Cost Control, and with a directive of the Office of Management and Budget that a 1-percent user fee be imposed in connection with the extension of debenture leverage by SBA. The proposed fee schedule represents an attempt to match administrative expense with debenture maturities so as to insure that each issuer's fee matches the actual and anticipated expense of servicing that issuer's account. Consequently, SBICs that issue debentures with a 10-year maturity will pay a one-time user fee of 1.1850 percent; SBICs that issue debentures with shorter terms will pay a one-time user fee of less than 1 percent.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs/business, Small business.

Review for Executive Order 12291 and Regulatory Flexibility

For the purpose of Executive Order 12291, effective February 17, 1981, SBA hereby certifies that this proposed amendment if promulgated in final form, taken by itself or in context with the other parts of the regulations, does not constitute a major rule with the meaning of the Executive Order.

For the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) SBA has determined that this proposed

amendment, if promulgated in final form, will not have a significant economic impact on a substantial number of small businesses.

It is anticipated that based upon the present approved levels of guaranty authority and direct money authority of SBA, the SBIC industry user fees in the aggregate will be between \$1.6 million and \$2.0 million per year.

PART 107—[AMENDED]

Accordingly, pursuant to the authority set forth in Secs. 303(b) and 308(c) of the Small Business Investment act, 15 U.S.C. 683(b) and 687(c), respectively, it is proposed to amend Part 107 of Title 13 to read as follows:

1. A new definition is added to § 107.3 to read as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

Definitions

§ 107.3 Definition of terms.

FFB Rate. FFB rate means the interest rate, as published from time to time in the Federal Register by SBA, for ten year debentures sold by Licensees to the Federal Financing Bank. User fees paid by a Licensee are not considered in determining the FFB rate.

2. A new paragraph (c) is added to § 107.201 to read as follows:

Borrowing by Licensee

§ 107.201 Funds to licensee.

(c) **User Fee.** All Licensees offering debentures for sale to, or for guaranty by, SBA are required to pay a one-time user fee equal to the following percentages of the par value (face amount) of the debentures.

Stated maturity of debenture (years)	Fee (percent)
3	0.5165
5	0.7690
7	0.9985
10	1.1850

The user fee on debentures intended to refund maturing obligations held or guaranteed by SBA shall be paid to SBA before such debentures may be purchased or guaranteed. If the Licensee's debentures evidence a new indebtedness, as distinguished from the refinancing of a pre-existing indebtedness, the user fee shall be

deducted from the proceeds remitted to the Licensee."

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 9, 1984.

James C. Sanders,
Administrator.

[FR Doc. 84-9995 Filed 4-12-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 159

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 140

[CGD 84-030]

Marine Sanitation Devices

AGENCY: Coast Guard, DOT and Environmental Protection Agency.

ACTION: Results of program review and availability of final review report.

SUMMARY: In the December 24, 1981 Federal Register (46 FR 62479) the Coast Guard and Environmental Protection Agency (EPA) jointly announced they were conducting a program review of the federal marine sanitation device (MSD) regulations and invited the public to comment on the existing and six alternative MSD programs. The review included an analysis of the costs and benefits of each of these programs. The final review report is complete and available to the public.

The review concludes that some relaxation of the current MSD requirements is warranted and recommends the program be modified to (1) provide some relief to small vessel owners, (2) allow the states some discretion and control in vessel sewage discharge requirements, and (3) provide some spread of enforcement responsibilities between the states and the Coast Guard. A summary of recommendations appear under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: *Availability of Report:* Copies of the report entitled "Priority Review of the Marine Sanitation Devices (MSD) Regulations (33 CFR Part 159)" may be obtained by writing: National Technical Information Service, Springfield, Virginia 22161. The report contains major points found during the review and recommendations; the appendices include an earlier EPA

report, the cost/benefit analysis, and a summary of the public comments. The basic report (number PB 84-166339) is available at a cost of \$10.00. A separate document of supporting appendices (number PB 84-166347) is available for \$29.50. The report and appendices are also available separately on microfiche at a cost of \$4.50 each.

FOR FURTHER INFORMATION CONTACT: LTJG W. H. Daughdrill, U.S. Coast Guard (202) 755-7917, from 7:00 a.m. to 3:30 p.m. (Eastern time) Monday through Friday, except federal holidays; or Mr. Jonathan Amson, U.S. EPA, (202) 245-3036, from 9:30 a.m. to 6:00 p.m. (Eastern time) Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION:

Summary of Recommendations

The Coast Guard and EPA recommend changing the current MSD program to the following:

- Abolish federal MSD requirements for all vessels 65 feet or less in length. Allow states to adopt discharge standards for these vessels (65 feet or less in length) based on the present federal design standards (Type I, II or III) or have no program at all. Federal MSD requirements for all vessels over 65 feet and all federal design standards for MSDs would be retained. States shall ensure the need for no-discharge and the adequacy of pumpout facilities before establishing no-discharge (Type III) requirements for vessels 65 feet or less in length in all or a portion of their waters. States would continue to apply to the EPA if they wish the no-discharge requirements to apply to vessels greater than 65 feet in length.

- Enforcement for all vessels 65 feet or less in length would be exclusively a state responsibility. All vessels greater than 65 feet in length will be subject exclusively to federal MSD requirements and federal enforcement, while in the waters of any state.

- States shall consider vessels from other states transiting their no-discharge waters with Coast Guard certified flow-through devices or untreated flow-through toilet systems to be in temporary compliance if their toilet systems are secured so as to prevent all sewage discharges. States should specify a reasonable period of time allowing non-complying out-of-state registered vessels to pass through their waters (to facilitate interstate travel by vessels in compliance with their registered state's MSD requirements) before exercising appropriate enforcement action.

- Any Coast Guard certified and operable flow-through treatment device,

suitable for and properly installed on a vessel before the effective date of any change in the law, shall be considered in compliance with any state's regulations for the operable life of the device. However, states may require securing the flow-through systems to prevent discharge while transiting designated no-discharge waters.

It should be emphasized that this is only a review and not an action to change the current MSD program. The recommended program discussed above does not affect the existing MSD program. Until any legislative and regulatory changes are made, the existing MSD program remains in effect. Any proposed regulatory changes will be announced in a separate Notice of Proposed Rulemaking. There will be opportunity for public comment on any proposed regulations at that time.

Section 312 of the Clean Water Act (Pub. L. 95-217) is the legislative authority for the current federal MSD program. The Act requires the EPA to issue standards for the performance of MSDs; these are contained in 40 CFR 140. The Act also requires the Coast Guard to issue regulations for MSDs based upon the EPA standards. The Coast Guard MSD regulations, 33 CFR Part 159, apply to all vessels with installed toilets while operating in U.S. waters. Since January 30, 1980 all vessels with installed toilets are required to be equipped with a Coast Guard certified and operable Type I, II or III MSD. The Department of Transportation identified the MSD regulations as being costly and controversial and in 1981 tasked the Coast Guard with conducting a regulatory review. The EPA worked jointly with the Coast Guard during this program review because of the interrelationship of both agencies' regulations.

The review examined the current MSD program and six program options (identified as Options A through F). These are described below:

Current Program—All vessels with installed toilets are required to be equipped with an operable Type I, II, or III MSD. The Coast Guard performs certification and enforcement. States are preempted from issuing differing MSD requirements.

Option A—Abolish all federal requirements for MSDs. There would be no federal involvement in MSD certification or enforcement. States could adopt and enforce their own MSD requirements.

Option B—Abolish federal MSD requirements for recreational and commercial vessels 65 feet or less in

length, and allow optional state programs for these vessels based on federal design standards (Type I, II or III), or no program. Existing federal MSD requirements would apply to commercial vessels greater than 65 feet in length.

Option C—Allow optional state programs based on existing federal design standards (Type I, II or III), or no program. Federal MSD requirements (in addition to federal design standards) are also retained, but vessel owners may decide to comply with either state or federal requirements. Federal enforcement would be eliminated.

Option D—Establish federal Type I discharge standards as the minimum for all vessels. States may establish more stringent discharge standards based on federal design standards. Coast Guard certification and enforcement would be retained.

Option E—Establish federal Type I discharge standards as the minimum for all vessels; states cannot establish a more stringent standard. Coast Guard certification and enforcement would be retained.

Option F—Establish federal Type III standards and mandate the installation of pumpout facilities. Coast Guard certification and enforcement would be retained.

The December 24, 1981 Federal Register notice requested comments on the existing MSD program and the six alternative programs. The public comment period, scheduled to end on February 22, 1982, was extended unilaterally by the Coast Guard to April 19, 1982 due to several requests and problems in mailing the notice to interested parties. In all, 513 separate responses were received during the comment period including 459 letters, 45 form letters and 9 petitions. The comments came from a wide variety of sources, including pleasure boat owners, businesses, clubs and associations, commercial vessel owners and operators, states and other government agencies.

Of the 459 letters, 90 supported retaining the existing MSD program. Option A was supported by 57 of the comments while 45 supported Option B. Options C and D were supported by 9 and 7 comments respectively. Option E was supported by 27 comments while 3 supported Option F. A number of comments supported alternatives similar to Option B. Forty-five letters supported exempting vessels 65' or less in length from federal MSD requirements and preventing the states from establishing any programs, but in tidal waters only. There were also 115 letters which

supported exempting vessels 65' or less in length from federal MSD requirements and preventing the states from establishing any programs in all waters. Eight of the comments had environmental concerns only while 17 opposed delegating any responsibility for the MSD program to the states. A total of 36 comments were general in nature and could not be categorized.

Eight petitions with 175 signatures supported exempting vessels 65 feet or less in length and preventing the states from establishing any state regulation of these vessels. One petition with 34 signatures supported totally abolishing the federal MSD program and preventing any attempt by states to set up similar programs. The forty-five form letters, all copies of the same letter, supported exempting vessels 65 feet or less in length using federal navigable waters from complying with the federal MSD requirements.

Twenty-three responses were received from state government agencies, including one comment from the Commonwealth of Puerto Rico. Comments came from 18 separate states with 5 states submitting multiple responses. A total of 9 state comments supported Option B. There were 7 comments supporting the "no change" option. There were also 3 state comments which favored Option F; 2 supported Option C; 2 supported Option D; and none supported Options A or E.

In summary, Option B and variations of Option B which exempt vessels 65 feet or less in length from federal MSD requirements, received the greatest public support. Private small boat owners constituted the largest single category of the responses received.

A detailed analysis of the public comments is provided as an appendix to the report.

An analysis of the costs and benefits of the existing MSD program and the six program alternatives (Options A through F) is included as an appendix to the report.

Major Points: The following major points are drawn from the various phases of the review:

- There is insufficient quantitative evidence showing that vessel sewage discharges, particularly from small vessels, constitute a national environmental problem. Environmental impacts from vessel sewage discharges appear to have only localized effects and should be dealt with on a local or state level.

- Benefits to public health and water quality resulting from the existing federal MSD program have not been conclusively demonstrated, nor are they

capable of being easily quantified, on a national level.

- U.S., Canadian, and International Maritime Organization sewage discharge standards and MSD requirements all differ. This presents problems for vessels operating in the Great Lakes, for U.S. vessels operating in foreign waters, and for foreign vessels operating in U.S. waters.

- The federal MSD program has been and continues to be the subject of considerable uncertainty, including the belief by many that the MSD program will be modified or eliminated. This uncertainty has contributed to low levels of compliance.

- Nationwide, there is a lack of pumpout stations to service Type III MSDs for recreational vessels. Marina operators will not install pumpout stations unless they feel these facilities will be used enough to justify capital investments. Boat owners will not install Type III devices unless they feel that adequate pumpout facilities will be available. Pumpout stations for small boats do not generally exist, except in federally designated no-discharge areas.

- Coast Guard levels of enforcement for recreational and small uninspected commercial vessels are inadequate to ensure compliance, and impractical due primarily to a lack of sufficient Coast Guard resources and the large number of these vessels. There is generally no Coast Guard enforcement to ensure that the equipment is maintained and functioning properly to meet the EPA standard.

- Coast Guard certification and testing of MSDs, as it currently exists, does not ensure actual operational compliance for an extended period of time in the marine environment.

- The technology for development of Type II MSDs suitable for small vessels (65 feet or less in length) is currently very limited and not expected to improve significantly in the foreseeable future. The large size and power requirements necessary for Type II devices generally make them unsuitable for smaller vessels. A waiver presently allows vessels 65 feet or less in length to continue to use Type I MSDs.

- Option B, and variations of Option B which exempt vessels 65 feet or less in length from federal MSD requirements, received the greatest public support. Option F, which requires federal Type III devices (no-discharge) and mandates installation of pumpout facilities at all marinas, received the least public support.

- The majority of recreational boaters and boating organizations oppose the existing MSD regulations. They feel that vessel sewage discharges are not

environmentally significant, that MSDs are costly and unreliable, that MSDs have significant maintenance problems, and that MSDs pose a space and power burden on vessels.

- The majority of states, which submitted MSD program comments, support regulation or control of boat sewage discharges at some government level. Of the states responding, most support some state role in the enforcement of the federal regulations or supplemental state requirements.

- The states and MSD manufacturers which responded during the public comment period overwhelmingly support continued federal design standards and federal certification of devices. There is almost unanimous opposition to any program allowing a patchwork of many conflicting state MSD requirements.

- Each of the six MSD program alternatives requires legislative changes and/or changes in EPA's standards.

Recommendations: Based upon major points identified in the review the report recommends that:

- A modified version of Option B be adopted.

- EPA propose legislation at the appropriate time to amend Section 312 of the Clean Water Act providing for the preferred program derived from Option B. The Coast Guard should provide necessary assistance.

- Where desired, Coast Guard/State enforcement agreements be implemented as an interim measure while the necessary federal and state legislative and regulatory changes proceed.

- Foreign vessels having International Maritime Organization or Canadian certified MSDs be allowed to transit and operate in U.S. waters.

- Federal design standards and certification requirements for MSDs be retained, and that states be allowed to adopt only Type I, II or III federal standards (or no program at all).

- The Coast Guard continue its efforts with industry to improve design, durability, and reliability of MSDs.

- Requirements for vessel manufacturers (33 CFR 159.5) and requirements for vessel operators (33 CFR 159.7) be changed to allow Type I MSDs instead of Type II MSDs for vessels 65 feet or less in length (if the preferred option is not adopted).

- The Coast Guard develop necessary requirements, such as periodic testing, to assure MSDs are properly operating after they are installed on all vessels over 65 feet in length.

It is reemphasized that this is only a review and not an action to change the

current MSD program. The recommended program discussed above does not affect the existing MSD program. Until any legislative and regulatory changes are made, the existing MSD program remains in effect. Any proposed regulatory changes will be announced in a Notice of Proposed Rulemaking. There will be opportunity for public comment on any proposed regulations at that time.

Dated: April 4, 1984.

Henry L. Longest II,
Acting Assistant Administrator for Water.

Dated: March 27, 1984.

Bobby F. Hollingsworth,
Rear Admiral, U.S. Coast Guard, Chief, Office
of Marine Environment and Systems.

[FR Doc. 84-9834 Filed 4-12-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50506A; TSH-FRL 2565-1]

Substituted Methylpyridine and Substituted Phenoxypyridine; Proposed Determination of Significant New Uses; Extension of Comment Period

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule; extension of
comment period.

SUMMARY: EPA is extending the comment period for the proposed significant new use rule (SNUR) for three chemical substances identified by premanufacture notice numbers P-82-326, P-83-237 (substituted methylpyridines), and P-83-330 (substituted phenoxypyridine). The proposed rule was published in the Federal Register of February 6, 1984 (49 FR 4390). The extension is in response to two requests for additional time for comment. This extension was necessitated by the inability of the requesters to obtain all documents and information in a timely manner from the Agency.

DATES: Written comments on the proposed rule must be submitted on or before May 7, 1984.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS-50506A. Non-confidential comments and sanitized versions of confidential comments received on the proposal will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E-107 at the address given above.

FOR FURTHER INFORMATION CONTACT:

Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M Street, SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

(Sec. 5, Pub. L. 94-469, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: April 6, 1984.

John A. Moore,
Assistant Administrator, for Pesticides and
Toxic Substances.

[FR Doc. 84-9961 Filed 4-12-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 84-360; FCC 84-127]

Procurement of Apparatus, etc; Establishment and Operation of the Global Communications Satellite System and Satellite Terminal Stations

AGENCY: Federal Communications
Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to eliminate or amend Part 25, the Commission's Satellite Procurement Rules. The Commission proposes to eliminate its satellite procurement rules *in toto*, and exempt all carriers except, if necessary, Comsat and AT&T. The Commission tentatively concludes that marketplace forces can be substituted, in most instances, for continued regulation in this area.

DATES: Comments due on June 15, 1984.
Replies due on July 9, 1984.

ADDRESS: Federal Communications
Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
John F. Healy, Common Carrier Bureau,
(202) 632-7834.

List of Subjects in 47 CFR Part 25

Communications equipment,
Satellites.

Notice of Proposed Rulemaking

In the matter of Amendment of Part 25 of the Commission's Rules and Regulations with respect to the procurement of apparatus, equipment, and services required for the establishment and operation of the global communications satellite system and satellite terminal stations CC Docket No. 84-360; FCC 84-127.

Adopted: March 30, 1984.

Released April 10, 1984.

By the Commission.

1. We have today adopted a Notice of Proposed Rulemaking proposing modification of policy on the ownership and operation of U.S. earth stations that operate with the INTELSAT global communications satellite system.¹ In that NPRM, we have tentatively concluded that the public interest would be served by an earth station ownership policy which permits individual carrier ownership and operation of such stations and relies on competition to the maximum extent permissible by statute. In view of this tentative conclusion we believe that we should concurrently revisit the applicability of and the need to retain the satellite procurement rules set forth in Part 25 of the Commission's Rules and Regulations. 47 CFR 25.151 *et seq.*

2. The Commission's satellite procurement rules were adopted on January 8, 1964 in Docket No. 15123.² In that proceeding, the Commission established the rules pertaining to procurement by the Communications Satellite Corporation (Comsat) and other carriers of apparatus, equipment and services required for establishment and operation of the global satellite system and U.S. earth stations operating with that system. The rules were adopted to govern the administration of Sections 102(c) and 201(c)(1) of the Communications Satellite Act of 1962, which delegates to the Commission responsibility for insuring effective competition in such procurement. 47 U.S.C. 701(c) and 721(c)(1).

3. The Commission's satellite procurement rules were established at a time when the primary concern was the expeditious establishment of the global satellite system called for by the Satellite Act. Comsat was created as the entity charged with achieving this goal and, as a result, was to become a large consumer of communications satellite equipment. The Commission then found it necessary to establish uniform

¹ U.S. Earth Stations (Notice of Inquiry), 90 FCC 2d 1458 (1982); (Notice of Proposed Rulemaking) Mimeo No. 34408 (adopted March 30, 1984).

² Amendment of Part 25 of the Commission's Rules and Regulations (Communications Satellite Procurement), 1 RR 2d 1611 (1964).

comprehensive procedures applicable to all procurements.³

4. Those satellite procurement rules are still in effect. They provide for a notification procedure under which the carrier making the procurement must notify the Commission upon selecting a prime contractor. 47 CFR 25.162. The carrier may award the proposed contract at any time subsequent to 10 days after the date of filing notification unless within such period either: (a) it voluntarily extends the period; (b) the Commission notifies it that the notice is defective; or (c) the Commission finds that it cannot, without further investigation, determine whether its procurement rules have been complied with. In the latter case, the Commission may issue a public notice inviting comments on the proposed award. 47 CFR 25.166. The contract may be awarded unless within thirty days after issuance of the public notice the Commission finds that the procurement rules have not been complied with and so notifies the carrier. 47 CFR 25.166(b). Such further notice shall specify a reasonable time within which such party may respond thereto. Upon receipt and consideration of such response, if any, and all other relevant information, the Commission shall enter an order either permitting the award of the contract or subcontract or institute such further proceedings as appear appropriate.

5. The rules also provide for contractor selection to be done by either formal advertising, two-step procurement, or negotiation, and set forth specific procedures for each type of process. The process employed depends on the nature of the apparatus, equipment or service to be procured. See 47 CFR 25-171-74. In addition, the rules contain requirements intended to insure that small business concerns have an opportunity to share in the procurements. 47 CFR 25.176.⁴ The rules require all affected carriers to maintain records of all awards for three years and annually file reports providing certain information about all subcontractors awarded under prime contracts. 47 CFR 25.177. Also, the rules provide for Commission inspection of the procurement practices and procedures

of a carrier, including access to pertinent operations, accounts, records and memoranda. 47 CFR 25.178.

Discussion

6. It has been twenty years since the Commission promulgated its satellite procurement rules. In mandating "maximum competition. . . in the provision of equipment and services utilized by the system," Congress recognized that establishment of a single commercial system would present problems requiring regulation because most major carriers which sought participation in the system were also engaged in the manufacture of satellite hardware and related facilities through corporate affiliates. The fear was that such affiliates might receive favored treatment in supplying equipment and services for the system and thereby deprive others of an opportunity to compete in a then newly emerging market.⁵ The Commission enacted its satellite procurement rules to achieve the policy objective of effective competition in procurement of equipment and services and to prevent unfair competitive advantages from accruing to any manufacturing interest.

7. The objective of establishing a global communications satellite system has been achieved through the INTELSAT system.⁶ The system has since grown in size and complexity and many countries also have created domestic and regional systems. Continued growth of satellite systems has resulted in a significant demand for earth station equipment, much of which is now available "off-the-shelf," and a satellite equipment industry that is highly competitive. In recently amending the procurement rules to raise the minimum cut-off amount in § 25.151 from \$25,000 to \$100,000, we recognized that many buyers and sellers for earth station equipment now exist and will continue to exist in the future.⁷

8. We believe that competition in the satellite equipment market will be further increased by the introduction of competition into earth station ownership and operation as we are today proposing in Docket No. 82-540. Competing earth station owners and operators will have the incentive to seek the least cost, most efficient equipment and services in order to remain competitive. Congress' original concern about the potential effect of

establishment of a single commercial system on competition in the procurement of equipment and services should be alleviated as a result. In addition, we are concerned that applying the satellite procurement rules to small earth station operators, such as those seeking to provide INTELSAT's new IBS service or specialized television services, would hinder promotion of competition in such services.⁸ The administrative requirements of the rules would appear to be unnecessarily burdensome and costly and may even discourage entry by some potential carriers. Under these circumstances, and in view of our proposals in Docket No. 82-540 to introduce competition in earth station ownership and operation, we tentatively conclude that the Commission's mandate "to ensure effective competition" in the procurement of earth station equipment and services can be accomplished through reliance on marketplace forces.⁹

9. However, we remain cognizant of Congress' concern about carrier participants in the system who also have manufacturing and service affiliates. Comsat since 1964 has emerged as a force in satellite communications and technology. Comsat is applying its expertise in many fields of endeavor including the manufacture of specialized satellite communications equipment. The Commission has stated its view that Comsat should not be limited to its INTELSAT/INMARSAT role, if its non-INTELSAT/INMARSAT activities are not inconsistent with its statutory responsibilities.¹⁰ AT&T no longer has an ownership interest in Comsat. However, with AT&T's established position in both the domestic and international markets and its research

³ INTELSAT's International Business Service (IBS) is a totally digital integrated service designed to accommodate a full range of user applications including telex, voice, facsimile, data and teleconferencing. We are today granting Comsat's application (IPC-83-004) to participate in the IBS program and we are conditionally granting its applications (CSG-83-039; IPC-83-067) to construct and operate an earth station at the New York Teleport facility to provide IBS service. We are also today conditionally granting the applications of International Relay, Inc., to construct and operate earth stations in Chicago (CSG-84-001-P/L; ITC-84-001) and New York City (CSG-84-004-P/L; ITC-84-024) to provide IBS service.

⁴ The INTELSAT procurement regulations apply to INTELSAT procurement of space segment equipment and services. As noted in footnote 3, *supra*, the Commission's procurement rules do not apply to procurements made by or on behalf of INTELSAT.

⁵ Comsat Study, *supra*, at 1171-1172; Comsat Structure Proceeding, 90 FCC 2d 1159 (1982), reconsideration denied, Mimeo No. 32898 (released April 20, 1983).

³ Section 25.151 exempts procurements (a) less than \$100,000, (b) for electric power, gas, water and other utility services, (c) from or through a government instrumentality, (d) for personal services, and (e) made by or on behalf of INTELSAT.

⁴ In part, this provision requires a carrier to divide procurement into small lots when economically and technically feasible to permit bidding by small business concerns and to award a procurement to a small business concern when a procurement can be fulfilled or furnished by such concern, price and other factors considered.

⁵ Communications Satellite Procurement, *supra*, 1 R.R. 2d at 1612-13.

⁶ See Comsat Study, 77 FCC 2d 564 (1980).

⁷ Amendment of Satellite Procurement Rules, NPRM, Mimeo No. 33039 (released April 18, 1983); Report and Order adopted, Mimeo No. 33814 (released September 23, 1983).

and manufacturing capability, it remains a significant force in satellite communications and technology. Therefore, we request information and comments as to whether the existing rules should be amended to apply solely to either or both Comsat and AT&T.

10. In addition, should we decide to continue to make the satellite procurement rules applicable to Comsat and/or to make them applicable to AT&T, we request comments on the extent of regulation necessary to assure effective competition as required by our congressional mandate. Such comments should specifically address the continued need for retention of (1) the notification procedures §§ 25.162-25.166; (2) the methods of procurement §§ 25.171-25.174; and (3) § 25.176 concerning small businesses. Comments should also be directed at alternative regulatory approaches to our current comprehensive rules. For example, one alternative approach would be to require either Comsat and/or AT&T to develop internal competitive bidding procedures to replace the current Commission prescribed procedures. Such internal procedures would be initially submitted to the Commission for approval. The Commission would be given a 90 day notice of any subsequent changes in the procedures and could reject those changes. Notice of procurement awards with a copy of the contract would have to be filed with the Commission after award of the contract. Complaints to the Commission would be filed under Section 208 of the Communications Act of 1934, as amended, 47 U.S.C. 208. Complaints must contain allegations, which if true, would constitute a violation of the approved internal procurement rules. As the Commission emphasized in adopting the current satellite procurement rules, we will not perform the role of a contracting officer empowered to initiate, formulate and approve procurement REP's or contracts, nor will we conduct negotiations or select contractors. Prior Commission approval of contracts is not required.¹¹

As do the present satellite procurement rules, the approved internal procedures would serve as the procedural framework to assure effective competition in satellite procurements.

11. Accordingly, we request comments on:

(a) the elimination of §§ 25.151 through 25.178 or,

(b) the amendment of §§ 25.151 through 25.178 to make them applicable to only Comsat and/or AT&T.

12. Regulatory Flexibility Act Initial Analysis.

I. Reason for Action: It has been twenty years since the Commission adopted its satellite procurement rules currently encompassed under Part 25 of the Commission's Rules, and this passage of time has resulted in changed circumstances necessitating our review.

II. The Objective: The Commission proposes to eliminate its satellite procurement rules *in toto*, and exempt all carriers except, if necessary, Comsat and AT&T.

III. Legal Basis: Authority for the proposed legal action is found at Sections 102(c) and 201(c)(1) of the Communications Satellite Act of 1962, which require the Commission to insure effective competition in satellite procurements.

IV. Description, potential impact and number of small entities affected: The elimination or amendment of the current satellite procurement rules, as proposed, would negate any requirement for small entities to file any documentation under these rules such as small earth station owners.

V. Recording, record keeping and other requirements: The proposed rules would eliminate all requirements for filing pursuant to the satellite procurement rules except, if necessary, Comsat and AT&T.

VI. Federal rules which overlap, duplicate, or conflict with this rule: None.

VII. Any significant alternatives minimizing impact on small entities and consistent with the stated objective: The Commission's alternative is to subject small entities, such as small earth station owners, to the current comprehensive regulation. For the reasons discussed herein, we tentatively conclude that marketplace forces can be substituted, in most instances, for continued regulation in this area.

Procedure Schedule

13. For the purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and oral arguments) between a person outside the Commission and a

Commissioner or a member of the Commission's staff that addresses the merits of the proceedings. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231.

14. Accordingly, it is ordered, that, pursuant to Sections 4(i), 4(j), 201-205, 214, 215, 218, 220, 303, 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 201-205, 214, 218, 220, 303, 309, 403 (1976), Sections 102(c), 201(c), and 401 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. Sections 701(c), 721(c), 741 (1976), and Section 553(b) of the Administrative Procedure Act, 5 U.S.C. Section 553(b) (1970), a Notice of Proposed Rulemaking on the captioned matter is instituted.

15. It is further ordered, That, interested parties may file comments on matters raised herein on or before June 15, 1984 and reply comments on or before July 9, 1984.

16. It is further ordered, That, in accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, all participants in the proceeding ordered herein shall file with the Commission an original and five (5) copies of all comments and reply comments. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. Copies of comments and reply comments filed in this proceeding shall be available for public inspection during regular business hours in the Commission's reference room at its headquarters at 1919 M Street, NW., Washington, D.C.

¹¹ Communications Satellite Procurement, at 1612-13.

17. It is further ordered, that the Secretary shall cause a copy of this NPRM to be published in the Federal Register and shall mail a copy of this NPRM to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 84-9776 Filed 4-12-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 80-440; FCC 84-101]

Inquiry Into New Spectrum Enhancing Technologies in the Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Order terminating proceeding.

SUMMARY: The FCC is terminating PR Docket 80-440 since it issued a Notice of Proposed Rule Making proposing a specific channel structure and licensing plan for narrowband operations in the private land mobile 150 MHz band.

DATE: April 6, 1984.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Keith Plourd, Private Radio Bureau, (202) 634-2443.

Order Terminating Proceeding

In the Matter of Amendment of the Commission's Rules governing land mobile radio stations to provide for additional technologies which can improve the efficiency of radio spectrum use (PR Docket 80-440).

Adopted: March 15, 1984.

Released: April 6, 1984.

By the Commission.

1. In the Notice of Inquiry released September 9, 1980, in the above entitled matter, the Commission requested comments on possible new technologies which could improve the efficiency of the land mobile spectrum. Of particular interest to the Commission was the potential of amplitude compandored single sideband for increasing spectrum efficiency.

2. The comments received in response to this proceeding are now over two years old. During this time there have been considerable advances in narrowband technologies. Moreover, the Commission has gained additional experience with regard to amplitude compandored single sideband through its developmental licensing program and by equipment tests. We now are in a position to make specific proposals for

introducing narrowband technology. In this regard, we are today issuing a Notice of Proposed Rule Making proposing a specific channel structure and licensing plan for narrowband systems in the private land mobile 150 MHz band. In light of this Notice of Proposed Rule Making, we are terminating the present proceeding.

3. In view of the foregoing, it is ordered, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, that this proceeding is terminated without further action.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 84-9779 Filed 4-12-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 34]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: On October 19, 1983, the Department of Transportation published a notice of proposed rulemaking (NPRM) proposing several alternative actions to provide protection for an automobile's front seat occupants in case of frontal, side-impact, and roll-over accidents. In that NPRM, we said that we anticipated publishing a final decision document or a supplemental notice of proposed rulemaking (SNPRM) on or before April 12, 1984. If an SNPRM was necessary, we said we would publish a final decision document by July 11, 1984. We received over 6,000 comments on our RPRM, some of which raised complex issues requiring further analysis. Accordingly, we plan to publish an SNPRM in the next few weeks to ask for comments on the remaining issues. We also still expect to publish a final decision document by July 11, 1984.

FOR FURTHER INFORMATION CONTACT:

Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202-426-4723).

Issued in Washington, D.C., on April 11, 1984.

Elizabeth H. Dole,

Secretary of Transportation.

[FR Doc. 84-10096 Filed 4-11-84; 3:40 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Primula Maguirei* (maguire primrose) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Primula maguirei* (maguire primrose) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended. No critical habitat is being proposed at this time. There are nine known populations of *Primula maguirei*, none of which contains more than 100 individual plants. These populations are located in Logan Canyon, Cache County, Utah, on U.S. Forest Service and Utah State lands. The plants grow on ledges and in cracks of vertical cliffs and outcropping of rock within the canyon. The species is threatened by rock climbing, collecting, and potential highway construction. Determination that *Primula maguirei* is a threatened species would provide the species protection under the authority of the Endangered Species Act of 1973, as amended. The Service is requesting comments on this proposed action.

DATES: Comments from all interested parties must be received by June 12, 1984. Public hearing requests must be received by May 29, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection during normal business hours at the Service's Regional Endangered Species Division, 134 Union Boulevard, Fourth Floor, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT:

Dr. James L. Miller, Regional Botanist, Regional Endangered Species Division, at either address above, 303-234-2496; FTS 234-2496.

SUPPLEMENTARY INFORMATION:

Background

Primula maguirei was described by L. O. Williams in 1936. The plant is a perennial herb, with conspicuous and showy lavender-colored flowers. Stems are approximately 4–10 cm tall and bear from one to three flowers. Leaves are broadly spatulate, rounded at the tip, and approximately 3–7 cm long and 8–12 mm broad. This species is found only in Logan Canyon, Utah, and grows on damp ledges, crevices, and overhanging rocks of the canyon walls. Montane shrubs, aspen, and conifers are the dominant species of the plant community. *Primula maguirei* is typically found on northerly exposures with a slope of 50 to 100 percent, and at elevations of 4,500 to 5,500 ft. (1,342 to 1,670 m). Geological formations of the canyon are composed mostly of carboniferous limestones and dolomites.

Primula maguirei was first observed in Logan Canyon on May 10, 1911, and was seen again in 1932 and 1953, but the number of plants found on these occasions is not known. At present, there are nine known populations, none of which contains more than 100 individual plants (some contain less than 30). All populations are threatened by potential highway construction, by rock climbing, and collecting.

Section 12 of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, directed the Secretary of the Smithsonian Institution to prepare a report on those plant species considered to be endangered, threatened, or extinct. This report was submitted to Congress (House Document No. 94–51) on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823–27924) of its acceptance of the report as a petition within the context of former Section 4(c)(2) of the Endangered Species Act of 1973 (now Section 4(b)(3)(A), as modified), and of its intention to review the status of the plant taxa named therein. *Primula maguirei* was included in that report.

On December 15, 1980, the Service published a new notice of review for plants in the *Federal Register* (45 FR 82480–82569), which included *Primula maguirei* as a Category 1 species. Category 1 is comprised of taxa for which the Service presently has sufficient biological information to support their being listed as endangered or threatened species. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review are considered to be

petitioned, and the deadline for a finding on those species including *Primula maguirei*, was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Primula maguirei* was warranted but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act. Such a finding requires a reevaluation of the petition within 12 months, pursuant to Section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the new finding that the petitioned action is warranted and proposes to implement the action in accordance with Section 4(b)(3)(ii) of the Act.

Status reports compiled by Beedlow *et al.* (1980), Welsh and Thorne (1979) and Welsh (1979), and investigations by Service botanists and others have provided new biological data which are included in this proposal. These new data demonstrate low numbers of plants and continuing threats to the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Primula maguirei* L. D. Williams (Maguire primrose) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Primula maguirei* is found only in Logan Canyon, Cache County, Utah (Welsh and Thorne 1979; Welsh 1979; Beedlow *et al.* 1980). A 1980 survey by Bio-Resources, Inc., of Logan, Utah, located two new populations in addition to the seven previously known, bringing the total of known populations to nine (Beedlow *et al.* 1980). Increased human activities in Logan Canyon pose a threat to this species. The Utah Department of Transportation is planning a highway construction project for U.S. Route 89 between the Right Fork of Logan Canyon to Rick's Spring. One known population center of *P. maguirei* would be affected by this activity, and two additional populations would also probably be disturbed. Any construction along that stretch of highway done without consideration of *P. maguirei* could threaten the species (Beedlow *et al.* 1980). Development of campgrounds

in the Logan Canyon area also may pose a threat to the species (Welsh 1979).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* *Primula maguirei* is a beautiful flowering plant and therefore subject to overcollection. Exploitation for commercial and amateur gardening is a potential threat (Welsh and Thorne 1979). Rock climbing activity is presently damaging some plants; climbers "clean" vegetation from cracks and ledges as they climb (Beedlow *et al.* 1980). Critical habitat is not being proposed due to the potential for exploitation of *Primula maguirei* for gardening purposes.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms.* No State laws or regulations currently protect *Primula maguirei*. The U.S. Forest Service has established a national policy, based on the National Forest Management Act, of protecting species that it has designated as "sensitive" species (Title 2600, Chapter 2670.3(2)). *Primula maguirei* has received such a classification and hence it is the policy of the Forest Service to provide for its protection. Listing of this species under the Endangered Species Act will provide the regulatory base to sustain the Forest Service in its national sensitive species policy on behalf of *Primula maguirei*, plus add the authority of the Fish and Wildlife Service in providing for the continued conservation of this tax-on as long as it remains listed as threatened. The Endangered Species Act would provide for protection of this species through Section 7 requirements for interagency cooperation, and through Section 9, which prohibits removal of endangered plants from areas under Federal jurisdiction when there is intent to reduce the plant to possession. The latter protection has been proposed for threatened plants in 48 FR 31417–31422 (July 8, 1983) to be codified at 50 CFR 17.61(c). See also 50 CFR 17.71.

E. *Other natural or manmade factors affecting its continued existence.* None known.

Critical Habitat

The Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B of the "Summary of Factors Affecting the Species," *Primula maguirei* is a beautiful plant that is threatened by

collecting with the potential for exploitation for commercial and amateur gardening. These activities are difficult to control and are not regulated by the Endangered Species Act with respect to plants, except on Federal lands. The Service believes that critical habitat designation, along with the required publication of maps, would make this species even more vulnerable to overcollection. Therefore, it would not be prudent to determine critical habitat for *Primula maguirei*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition if necessary, and cooperation with the States; it also requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The protection required by Federal agencies and applicable prohibitions are discussed in part below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. When a species is listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species. If an activity may affect a listed species, the Federal agency must enter into formal consultation with the Service under Section 7(a)(2). The Forest Service is already aware of the species' existence on its lands and is presently managing for its protection there.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions which apply to all threatened plant species. With respect to *Primula maguirei*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would

make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is not anticipated that many trade permits would ever be issued since *Primula maguirei*, although a desirable species, is not common in cultivation. Its rarity in the wild also precludes any significant trade.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. Section 4(d) provides for the provision of such protection to threatened species through regulations. This new protection will accrue to *Primula maguirei* once revised regulations are promulgated. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417).

Lands involved in this action are managed by the U.S. Forest Service and the State of Utah. No private lands are involved, and it is anticipated that few collecting permits will ever be requested for *Primula maguirei*.

Requests for copies of the regulations on plants, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Primula maguirei*;
- (2) The location of any additional populations of *Primula maguirei* and the

reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Primula maguirei*.

Final promulgation of the regulation on *Primula maguirei* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

National Environmental Policy Act

The Fish and Wildlife Service has determined the Environmental Assessments, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the Federal Register (48 FR 49244) on October 25, 1983.

References

- Beedlow, Peter A., John G. Carter, and Frank J. Smith. 1980. *Primula maguirei* L. Wms. (Primulaceae): a Preliminary Report on the Population Biology of an Endemic Plant. Bio-Resources, Inc., Logan, Utah. 2 pp.
- Welsh, S.L. and K.H. Thorne. 1979. Illustrated Manual of Proposed Endangered and Threatened Plants of Utah. U.S. Fish and Wildlife Service, Bureau of Land Management, and U.S. Forest Service, Denver, Colorado. 318 pp.
- Welsh, S.L. 1979. Status Report: *Primula maguirei*. U.S. Fish and Wildlife Service, Denver, Colorado. 6 pp.
- Williams, Louis O. 1936. Revisions of the Western Primulas. American Midland Naturalist. 17:741-748.

Author

The primary author of this proposed rule is Julie Bridenbaugh, Endangered Species Division, U.S. Fish and Wildlife Service, Denver Regional Office, Denver, Colorado (303/234-2496). James Miller of the Service's Denver Regional Endangered Species Office, and Bruce MacBryde and John Paradiso of the Service's Washington Office of Endangered Species, served as editors.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife,
Fish, Marine mammals, Plants
(agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order to the List of Endangered and Threatened plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Primulaceae—Primrose family:						
<i>Primula maguirei</i>	Maguire primrose.....	U.S.A. (UT).....	T.....	NA.....	NA.....	

Dated: March 29, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-0976 Filed 4-12-84; 8:45 am]

BILLING CODE 4310-07-M

Notices

Federal Register

Vol. 49, No. 73

Friday, April 13, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Termination of Contingent Right Stipulation Test

AGENCY: Forest Service, USDA.

ACTION: Notice of termination of contingent right stipulation test.

SUMMARY: The Forest Service announces the termination of its test of the contingent right stipulation for geothermal and noncompetitive oil and gas leases. Notice of the test was published in the *Federal Register* at 47 FR 18158 on April 28, 1982.

EFFECTIVE DATE: April 13, 1984.

ADDRESS: Comments or inquiries about this notice may be addressed to R. Max Peterson, Chief, (2820), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Davis Hintzman, Minerals and Geology Management Staff, (703) 235-8010.

SUPPLEMENTARY INFORMATION: The Forest Service announced on April 28, 1982 (47 FR 18158) that certain National Forest areas would be selected to test the acceptance and workability of the contingent right stipulation. By using the contingent right stipulation, the Forest Service could recommend or consent to the issuance of geothermal and noncompetitive oil and gas leases without detailed pre-lease environmental analysis. The contingent right stipulation provided for subsequent denial of approval for any operations that would have unacceptable environmental impacts. While the test has received approval by some applicants and other interested parties, the degree of acceptance has not been sufficient to continue using the

contingent right stipulation. Therefore, the test is terminated.

Dated: April 6, 1984.

R. Max Peterson,
Chief.

[FR Doc. 84-9948 Filed 4-12-84; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-791-0081]

Steel Wire Rope From South Africa; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of suspension agreement.

SUMMARY: On January 26, 1984, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on steel wire rope from South Africa. The review covers the period December 1, 1982 through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Philip Otterness or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1984, the Department of Commerce ("the Department") published in the *Federal Register* (49 FR 3233) the preliminary results of its administrative review of the suspension agreement on steel wire rope from South Africa (47 FR 54130, December 1, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of South African steel wire rope. Such merchandise is currently classifiable under items 642.1200, 642.1610, and 642.1650 of the Tariff Schedules of the United States Annotated. The review covers the only known exporter of South African wire rope to the United States, Haggie Limited, the signatory to the suspension agreement.

The review covers the period December 1, 1982, the effective date of the suspension agreement, through June 30, 1983 and five programs: (1) Preferential rail rates; (2) Export Incentive Program—Categories A, B, and D; (3) the Iron/Steel Export Promotion Scheme; (4) the General Levy and Import Subsidy Scheme; and (5) and Industrial Development Corporation loan.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine that Haggie has complied with the terms of the suspension agreement for the period December 1, 1982 through June 30, 1983. Haggie renounced all benefits associated with exports of wire rope to the United States, did not accept substitute or equivalent benefits, and met all of the reporting requirements of the agreement. Haggie continued to account for at least 85 percent of imports of South African wire rope into the United States.

Therefore, the suspension agreement for South African wire rope shall remain in effect. The Department intends to begin immediately the next administrative review of the agreement.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 7, 1984.

Alan F. Holmer,
Deputy Assistant Secretary, Import
Administration.

[FR Doc. 84-8950 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-010]

Galvanized Steel Wire Strand From South Africa; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary results of administrative review of suspension agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on galvanized steel wire strand from South Africa. The review covers the period May 1, 1983 through September 30, 1983.

As a result of the review, we preliminarily determine that the signatory, Haggie Limited, the only known exporter of South African galvanized strand to the United States, has complied with the terms of the suspension agreement. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR 19451) a notice of suspension of countervailing duty investigation regarding galvanized steel wire strand from South Africa and announced its intent to conduct an administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of South African galvanized steel wire strand. Such merchandise is currently classifiable under items 642.1142 and 642.1144 of the Tariff Schedules of the United States Annotated. The review covers the only

known exporter of South African galvanized steel wire strand to the United States, Haggie Limited, the signatory of the suspension agreement.

The review covers the period May 1, 1983 through September 30, 1983 and four programs: (1) Preferential rail rates; (2) Export Incentive Program—Categories A, B, and D; (3) the Iron/Steel Export Promotion Scheme; and (4) the General Levy and Import Subsidy Scheme.

A fifth program, administered by the Steel and Engineering Industrial Federation of South Africa ("SEIFSA"), is also included in the April 29, 1983 galvanized strand suspension agreement. This program was found not to be countervailable in a final determination on pipes and tubes from South Africa on September 12, 1983 (48 FR 40928). Although under the terms of the agreement it is the responsibility of the company to initiate action, the Department has decided that the program should be withdrawn from the agreement and proposes to include the change in this review.

Analysis of Programs

(1) *Preferential Rail Rates.* The South Africa Transport Services, a government-owned corporation, maintains a rate schedule that provides preferential rates for container shipments destined for export. Haggie ships all of its galvanized strand for export in containers. During the period of review, Haggie paid the higher domestic rate for all shipments of galvanized strand, whether for export or for domestic use. This eliminated the differential, in accordance with the terms of the suspension agreement.

(2) *Export Incentive Program.* In 1980 the South African Department of Industries, Commerce, and Tourism expanded and restructured its Export Incentive Program into four categories. Category C of this program was eliminated on April 1, 1982.

Category A is a tax credit equal to 50 percent of the value of import duties on raw materials that are re-exported after further processing. Haggie did not apply for Category A benefits during the review period.

Category B is a tax credit equal to 10 percent of the value-added component of merchandise that a company exports if there is a South African import duty on such merchandise. There is an import duty on galvanized strand. Category D consists of a deduction of taxable income of up to 200 percent of export market development expenses. Haggie is eligible for the full deduction of 200 percent. Haggie has not yet filed its tax return for the period under review but,

as part of the suspension agreement, agreed not to claim Category B and D benefits for exports of galvanized strand to the United States. In a subsequent review, after Haggie has filed its return, we will reexamine whether or not Haggie claimed Category B or D benefits for shipments made during the review period.

(3) *Iron/Steel Export Promotion Scheme ("ISEPS").* The South African Rolled Steel Producers' Co-ordinating Council, a group of nine primary steel producers, introduced ISEPS in September 1972. The scheme pays to secondary steel exporters an amount equal to 19.5 percent of the f.o.b. invoice price on all exports of secondary steel products that contain rolled, drawn, or forged steel and that meet a 25 percent value-added criterion. The scheme is funded by a 4 rand per metric ton levy on all purchases of primary steel. The primary producers pay the levy to the fund, but the government allows an upward adjustment to the government-controlled price of primary steel to compensate for the amount of the levy, shifting the charge to the secondary producers.

Haggie did not make any claims for ISEPS benefits on shipments of galvanized strand to the United States during the review period, in accordance with the terms of the suspension agreement.

(4) *The General Levy and Import Subsidy scheme ("GLISS").* The primary steel producers on the South African Rolled Steel Producers' Co-ordinating Council created GLISS in the early 1970's. The scheme's purpose was to stabilize the difference between the government-controlled price of domestic primary steel, which was in short supply, and higher-priced steel imported to meet South African demand. In order to repay money borrowed from the South African government to finance GLISS, the Council now imposes a levy paid by secondary producers on their purchases of primary steel. This levy is rebated to secondary producers on their export sales at a rate of 9.99 rand per metric ton. Haggie did not receive any benefits from GLISS for shipments of galvanized strand to the United States during the review period.

We found no other benefits received by Haggie during the review period.

Preliminary Results of the Review

As a result of the review, we preliminarily determine that Haggie Limited has complied with the terms of the suspension agreement for the period May 1, 1983 through September 30, 1983.

The agreement can remain in force only so long as shipments covered by the agreement account for at least 85 percent of imports of galvanized steel wire strand to the United States. Our information indicates that Haggie Limited accounted for 100 percent of imports into the United States of galvanized steel wire strand from South Africa during review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such comments or at a hearing.

This administrative review and notice are in accordance with section 751 of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 7, 1984.

Alan F. Holmer,
Deputy Assistant Secretary, Import
Administration.

[FR Doc. 84-9951 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-005]

Deformed Steel Bars for Concrete Reinforcement From South Africa; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On January 26, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on deformed steel bars for concrete from South Africa. The review covers the period July 1, 1982 through December 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Philip Otterness or Brian Kelly, Office of

Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1984, the Department of Commerce ("the Department") published in the *Federal Register* (49 FR 3231) the preliminary results of its administrative review of the countervailing duty order on deformed steel bars for concrete reinforcement ("rebars") from South Africa (47 FR 47900, October 28, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of South African rebars. Such merchandise is currently classifiable under items 606.7900 and 606.8100 of the Tariff Schedules of the United States Annotated. The review covers the period July 1, 1982 through December 31, 1982 and two programs: (1) Preferential rail rates, and (2) the Export Incentive Program—Categories A, B, and D.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine the total bounty or grant to be zero percent for the period July 1, 1982 through December 31, 1982. The Department will instruct the Customs Service to assess countervailing duties of zero percent of the f.o.b. invoice price on any shipments entered, or withdrawn from warehouse, for consumption on or after August 17, 1982, the date of suspension of liquidation, and exported on or before December 31, 1982.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, of zero percent of the entered value on any shipment of South African rebars entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public

record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 6, 1984.

Alan F. Holmer,
Deputy Assistant Secretary Import
Administration.

[FR Doc. 84-9952 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-002]

Bicycle Tires and Tubes From Taiwan; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on bicycle tires and tubes from Taiwan. The review covers the period January 1, 1982 through December 31, 1982, and the single company subject to the order, Cheng Shin Rubber Company, Ltd.

As a result of the review, the Department has preliminarily determined the aggregate net subsidy for the period to be 0.76 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: John McKean or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR 43366) the final results of its last administrative review of the countervailing duty order on bicycle tires and tubes manufactured by the one Taiwanese company covered by the order, Cheng Shin Rubber Company, Ltd. (47 FR 6913, February 17, 1982), and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has

now conducted that administrative review.

Because the International Trade Commission ("the ITC") determined under section 104(b) of the Trade Agreements Act that no industry in the United States would be injured by importations of this merchandise if this countervailing duty order were revoked (48 FR 26655), the Department revoked the order effective December 30, 1982, the date the ITC notified the Department that Cheng Shin had requested the injury determination.

Scope of the Review

Imports covered by the review are shipments of Taiwanese pneumatic bicycle tires and tubes of rubber or plastic, manufactured by Cheng Shin, whether such tires and tubes are sold together as units or separately. Such merchandise is currently classifiable under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1982 through December 31, 1982, and six programs: (1) Preferential income tax rate ceilings; (2) preferential export financing; (3) income tax holidays; (4) tax deductions for investment in production equipment; (5) export loss reserves; and (6) deferred duty payments on raw materials.

Analysis of Programs

(1) Preferential Income Tax Rate Ceilings

Article 15 of the Statute for the Encouragement of Investment ("SEI") provides that, if a firm qualifies as a productive enterprise or a big trading company, its income tax (including surcharges) shall not exceed 25 percent. The stated standard tax rate is 35 percent of taxable income. Cheng Shin qualified as a productive enterprise, which entitled it to the 25 percent tax rate. We have not received adequate evidence that shows that the 25 percent income tax ceiling is not limited "to an enterprise or industry, or group of enterprises or industries" as provided in section 771(5)(B) of the Tariff Act. In order to calculate the benefit received by Cheng Shin in 1982, we used 1981 income tax data filed in 1982 to determine the tax differential between the 25 percent and 35 percent tax rates. We divided this differential by total sales for 1982. We preliminarily determine the benefit from this program to be 0.757 percent *ad valorem* for the period of review.

(2) Preferential Export Financing

Under the export financing program, the exporter receives a short-term loan at the prevailing commercial interest rate upon the presentation of a letter of credit from a foreign buyer. The interest rate is subsequently lowered by the lending institution upon approval by the Central Bank of China. Cheng Shin did not receive any preferential export financing for bicycle tires and tubes during 1982 nor was any outstanding from 1981. Therefore Cheng Shin received no benefit from the program during the period of review.

(3) Income Tax Holidays

Article 6 of the SEI states that when a productive enterprise belonging to any of the fourteen business categories defined in Article 3 of the SEI expands its production equipment through capital investment, the increased income derived from the investment may be exempt from income tax for a period of four consecutive years from the date on which the newly added equipment begins operation or rendering services. Because Cheng Shin received the tax holiday in 1981 as an incentive for expanding its processing of merchandise not subject to this order (pneumatic tires for special purpose vehicles, including tires and tubes for aircraft, movable machine tools, construction equipment, and farm machinery), we preliminarily determine that there is no countervailable benefit on bicycle tires and tubes.

(4) Tax Deductions for Investment in Production Equipment

Article 10 of the SEI allows a productive enterprise to deduct ten to fifteen percent of the amount invested in production equipment during a tax year from the income tax payable for that tax year. If the income tax payable is less than the deductible amount, the enterprise may carry the deduction forward for up to four years. In 1982, Cheng Shin invested in equipment for the production of merchandise not subject to this order (radial tires, and tires and tubes for motorcycles, movable machine tools and farm machinery). We therefore preliminarily determine that there is no countervailable benefit on bicycle tires and tubes.

(5) Export Loss Reserves

Article 31 of the SEI allows firms to set aside a reserve of up to one percent of the previous year's exports to be used for compensation of export losses incurred. The Department stated in its last review that it would investigate this program. After investigation, we found

that Cheng Shin set aside reserves for export losses in 1981. We divided the amount of the reserve used in 1982 by total export sales and found a benefit under this program of 0.002 percent *ad valorem* during the period of review.

(6) Deferred Duty Payments on Raw Materials

In our last review, we stated that we would examine whether Cheng Shin was deferring payments of import duties on raw materials used in goods ultimately sold by firms in the domestic market. Cheng Shin stated that there is no provision for this, although a statutory provision does exist that permits a remission of duties on imported inputs used in reexported products (section 3.092 *Taxes in Taiwan*, Republic of China). Under section 3.092, if the raw material is not exported in finished goods within eighteen months from the date of importation, the duty on the raw material must be paid together with a "delinquent fee" of 0.05 percent per day from the day of importation. This fee is greater than the comparable commercial interest rate. The program thus does not provide funds at less than commercial rates and is not countervailable.

Preliminary Results of the Review

As a result of the review, we preliminarily determine the aggregate net subsidy on Taiwanese bicycle tires and tubes manufactured by Cheng Shin to be 0.76 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 0.76 percent of the f.o.b. price on all shipments of bicycle tires and tubes manufactured by Cheng Shin exported on or after January 1, 1982 and entered, or withdrawn from warehouse, for consumption on or before December 29, 1982.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)).

and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 9, 1984.

Alan F. Holmer,
Deputy Assistant Secretary, Import
Administration.

[FR Doc. 84-9069 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-011]

Preliminary Determination of Sales at Less Than Fair Value; Carbon Steel Plate From the Republic of Korea

April 9, 1984.

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that carbon steel plate from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry in an amount equal to 5.1 percent of the f.o.b. value of the merchandise. If this investigation proceeds normally, we will make a final determination by June 25, 1984.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 377-3962.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that carbon steel plate from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 5.1 percent.

If this investigation proceeds normally, we will make a final determination by June 25, 1984.

Case History

On October 31, 1983, we received a petition from counsel for Gilmore Steel

Corporation on behalf of the domestic carbon steel products industry. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of carbon steel plate from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring or are threatening to materially injure a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on November 19, 1983 (48 FR 53588). On December 15, 1983 the ITC determined that there is a reasonable indication that imports of carbon steel plate are materially injuring a U.S. industry (48 FR 56450).

On December 7, 1983, we presented an antidumping questionnaire to counsel for the Pohang Iron and Steel Co., Ltd. (POSCO). On January 26, 1984, we received POSCO's response to the questionnaire. From March 5 through March 12, 1984, we verified POSCO's questionnaire response.

Scope of Investigation

The merchandise covered by this investigation is carbon steel plate. The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold rolled; not in coils; not cut; not pressed, and not stamped to non-rectangular shaped; not coated or plated with metal and not clad, 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6615 of the *Tariff Schedules of the United States Annotated*.

Semifinished products of solid rectangular cross sections with a width at least four times the thickness in the cast condition or processed only through primary mill hot-rolling are not included.

Since we believe that POSCO accounts for well over 95 percent of the exports of this merchandise to the United States, we limited our investigation to this one firm. We investigated all sales of carbon steel plate by POSCO during the period June 1 through November 30, 1983.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by POSCO because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price for each United States sale on the packed, f.o.b. or c. & f. prices to unrelated customers in the United States. We made deductions for trucking and handling charges in Korea and, where appropriate, for ocean freight. We made an addition for duties rebated upon exportation of the merchandise to the United States. We also added the amount of countervailing duty currently being imposed on POSCO's imports of this merchandise into the United States to offset an export subsidy, pursuant to section 772(d)(1)(D) of the Act.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on POSCO's home market prices. We used POSCO's home market prices because POSCO made sufficient sales in the Korean home market to form a viable basis for fair value comparisons.

Bethlehem Steel Corp., which entered an appearance as a party to this proceeding within the meaning of section 353.12(i), of our regulations (19 CFR 353.12(i)), alleged that POSCO made home market sales at less than the cost of producing this merchandise within the meaning of section 773(b) of the Act. Information that we received from POSCO and verified indicates that the sales prices in the home market, which we used for comparison purposes, were greater than the cost of producing this merchandise.

For POSCO, we calculated home market price on the basis of the packed f.o.b. Pohang or delivered price to unrelated customers in the Korean home market. We made deductions for handling costs and inland freight. We made adjustments for differences in merchandise in accordance with section 773(a)(4)(C) of the Act. Because POSCO was unable to break out the cost of various steel extras that accounted for all differences between the U.S. and home market merchandise, we used our Trigger Price extra amounts announced on November 19, 1981 (47 FR 56841). We determined that the Trigger Price extra amounts were the best available indication of POSCO's cost of each extra, because POSCO actually used our Trigger Price extra amounts in pricing

all carbon steel plate sold to the United States. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, and for differences in inspection costs. These circumstance of sale adjustments were made in accordance with section 353.15 of our regulations (19 CFR 353.15).

Verification

For purposes of this preliminary determination, we have verified the data used in reaching the determination in this investigation by using standard verification procedures, including on-site inspection of the manufacturer's operations and an examination of accounting records and randomly selected documents containing relevant information. In accordance with section 776(a) of the Act, we will verify all additional data used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of carbon steel plate from Korea which are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 5.1 percent of the f.o.b. value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1 p.m. on May 10, 1984, at the U.S. Department of Commerce,

Room 6802, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 3, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: April 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9966 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-DS-M

President's Export Council; Open Meeting

A meeting of the President's Export Council's Incentives/Disincentives Subcommittee will be held May 1, 1984, 9:30 a.m., at the Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue NW., Washington, D.C. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Industrial targeting, Japan trade issues, countertrade and barter, trade remedies legislation and the adequacy of our trade laws, and other trade related concerns.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Angi Knapp, (202) 377-1125, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: April 9, 1984.

Henry P. Misisco,

Acting Director, Office of Planning and Coordination.

[FR Doc. 84-9827 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Ronnie J. Gilbert

On December 23, 1983, Notice was published in the *Federal Register* (48 FR 56866) that an application had been filed

with the National Marine Fisheries Service by Dr. Ronnie J. Gilbert, Assistant Lender, Georgia Cooperative Fishery Research Unit, University of Georgia, Athens, Georgia 30602, for a permit to capture, sample, tag, and release shortnose sturgeon (*Acipenser brevirostrum*) on the Savannah River, Georgia/South Carolina.

Notice is hereby given that on April 5, 1984, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking to Dr. Ronnie J. Gilbert, subject to certain conditions set forth herein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Act.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries,
National Marine Fisheries Service,
3300 Whitehaven Street, NW.,
Washington, D.C.; and
Regional Director, National Marine
Fisheries Service Southeast Region,
9450 Koger Boulevard, Duval Building,
St. Petersburg, Florida 33702.

Dated: April 5, 1984.

Richard B. Roe,

Director, Office of Protected Species and
Habitat Conservation, National Marine
Fisheries Service.

[FR Doc. 84-9999 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals Issuance of Permit; Michael Graybill

On February 22, 1984, Notice was published in the *Federal Register* (49 FR 6526) that an application had been filed with the National Marine Fisheries Service by Mr. Michael Graybill, Orgeon Institute of Marine Biology, University of Oregon, Charleston, Oregon 97420 for a permit to take up to 300 harbor seals (*Phoca vitulina*) for the purpose of scientific research.

Notice is hereby given that on April 6, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Scientific Research Permit to Mr. Michael Graybill subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries,
National Marine Fisheries Service,
3300 Whitehaven Street, NW.,
Washington, D.C.; and
Regional Director, Northwest Region,
National Marine Fisheries Service,
7600 Sand Point Way, NE., BIN
C15700, Seattle, Washington 98115.

Dated: April 6, 1984.

Richard B. Roe,

Director, Office of Protected Species and
Habitat Conservation, National Marine
Fisheries Service.

[FR Doc. 84-0998 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal; Issuance of Permit No. 461; Sherman C. Jones III

On February 29, 1984, Notice was published in the *Federal Register* (49 FR 7429), that an application had been filed with the National Marine Fisheries Service by Mr. Sherman C. Jones III, Galveston, Texas 77553, for a scientific research permit to take an unspecified number of bottlenose and spinner dolphins by harassment for a period of two years.

Notice is hereby given that on April 5, 1984, the National Marine Fisheries Service issued a Scientific Research Permit as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) to Mr. Sherman C. Jones III, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries,
National Marine Fisheries Service,
3300 Whitehaven Street, Northwest,
Washington, D.C.; and
Regional Director, National Marine
Fisheries Service, Southeast Region,
9450 Koger Boulevard, St. Petersburg,
Florida 33702.

Dated: April 5, 1984.

Richard B. Roe,

Director, Office of Protected Species and
Habitat Conservation, National Marine
Fisheries Service.

[FR Doc. 84-10000 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-22-M

Salmon and Steelhead Advisory Commission; Public Meeting

AGENCY: National Marine Fisheries
Service, NOAA, Commerce.

SUMMARY: Meeting of the Salmon and
Steelhead Advisory Commission.

DATE: April 19, 1984. The meeting will
commence at 9:30 a.m. and is scheduled

to continue no later than 5:00 p.m. The
meeting will be open to interested
members of the public; a public
comment period will be scheduled for
11:00 a.m.

ADDRESS: Red Lion Inn, 18740 Pacific
Highway South, Seattle, Washington
98118, (206) 246-8600.

Meeting agenda: The Commission will
meet to review the status of the final
report to the Secretary of Commerce on
a coordinated approach to the
management of salmon in the
Washington and Columbia River
conservation areas.

FOR FURTHER INFORMATION CONTACT:

Dr. Thomas E. Kruse, Acting Regional
Director, National Marine Fisheries
Service, 7600 Sand Point Way NE., BIN
C15700, Seattle, Washington 98115,
Telephone: (206) 526-6150.

Dated: April 10, 1984.

Roland Finch,

Director, Office of Fisheries Management,
National Marine Fisheries Service.

[FR Doc. 84-10001 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Consultations With the Government of the People's Republic of China

April 10, 1984.

The Chairman of the Committee for
the Implementation of Textile
Agreements (CITA), under the authority
contained in E.O. 11651 of March 3, 1972,
as amended, has issued the directive
published below to the Commissioner of
Customs to be effective on April 16,
1984. For further information contact
Diana Bass, International Trade
Specialist (202) 377-4212.

Background

On March 27, 28, and 31, 1984,
pursuant to the terms of the Bilateral
Cotton, Wool and Man-Made Fiber
Textile agreement of August 19, 1983
between the Governments of the United
States and the People's Republic of
China, the Government of the United
States requested consultations
concerning imports into the United States
of textile and apparel products in
categories 410 (woolen and worsted
fabric), 613 (polyester/cotton and
polyester/rayon lightweight fabric in
TSUSA numbers 338.5035, 338.5036,
338.5039, 338.5041, and 338.5069), 644
(women's girls' and infants' suits of
man-made fibers, and 649 (man-made

fiber brassieres), produced or
manufactured in China and exported to
the United States. Summary market
disruption statements concerning each
of these categories follow this notice.

A description of the textile categories
in terms of T.S.U.S.A. numbers was
published in the *Federal Register* on
December 13, 1982 (47 FR 55709), as
amended on April 7, 1983 (48 FR 15175),
May 3, 1983 (48 FR 19924) and December
14, 1983 (48 FR 55607), December 30,
1983 (48 FR 57584), and April 4, 1984 (49
FR 13397).

Anyone wishing to comment or
provide data or information regarding
the treatment of these categories under
the agreement with the People's
Republic of China, or on any other
aspect thereof, or to comment on
domestic production or availability of
textile products included in these
categories, is invited to submit such
comments or information in ten copies
to Mr. Walter C. Lenahan, Chairman,
Committee for the Implementation of
Textile Agreements, International Trade
Administration, U.S. Department of
Commerce, Washington, D.C. 20230.
Because the exact timing of the
consultations is not yet certain,
comments should be submitted
promptly. Comments or information
submitted in response to this notice will
be available for public inspection in the
Office of Textiles and Apparel, Room
3100, U.S. Department of Commerce,
14th and Constitution Avenue NW.,
Washington, D.C., and may be obtained
upon written request.

Further comment may be invited
regarding particular comments or
information received from the public
which the Committee for the
Implementation of Textile Agreements
considers appropriate for further
consideration.

The solicitation of comments
regarding any aspect of the agreement
or the implementation thereof is not a
waiver in any respect of the exemption
contained in 5 U.S.C. 553(a)(1) relating
to matters which constitute "a foreign
affairs function of the United States."

Under the terms of the bilateral
agreement, the People's Republic of
China is obligated under the
consultation provision to limit its
exports to the United States of these
products during the indicated ninety-day
periods to the following amounts:

Category	90-day level
410.....	506,228 square yards (Mar. 31-June 29, 1984).
613pt.....	4,448,002 square yards (Mar. 27-June 25, 1984).
644.....	4,782 dozen (Mar. 28-June 26, 1984).

Category	90-day level
649	150,920 dozen (Mar. 28-June 26, 1984).

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation periods to the following amounts:

Category	12-month level
410	1,583,447 square yards (June 30, 1984-June 29, 1985).
613pt.	14,411,465 square yards (June 26, 1984-June 25, 1985).
644	8,432 dozen (June 27, 1984-June 26, 1985).
649	485,440 dozen (June 27, 1984-June 26, 1985).

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Categories 410, 613pt., 644 and 649 for the ninety-day periods at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the *Federal Register*.

In the event the limits established for Categories 410, 613pt., 644 and 649 for the ninety-day periods are exceeded, such excess amounts, if allowed to enter at the end of the restraint periods, shall be charged to the levels (described above) defined in the agreement for the subsequent twelve-month periods.

SUPPLEMENTARY INFORMATION: On December 22, 1983 a letter to the Commissioner of Customs was published in the *Federal Register* (48 FR 56626) from the Chairman the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1984. The notice document which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement such as Categories 410, 613pt., 644, and 649 which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for

consumption, or withdrawal from warehouse for consumption of textile and apparel products in Categories 410, 613pt., 644 and 649, produced or manufactured in the People's Republic of China and exported during the indicated ninety-day periods, in excess of the designated levels.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 410—Wool Broadwoven Fabrics March 1984.

U.S. imports of Category 410 from China were 1,479,000 square yards during the year ending January 1984 compared with 1,387,000 a year earlier. These imports are in a sector already severely affected by imports. These imports from China are imported at duty-paid values below the U.S. producer prices for comparable fabrics. China was the fifth largest supplier of Category 410. Two of the larger suppliers and several of the suppliers which shipped less than China have specific limits, agreed levels, or designated consultation levels for Category 410.

Production of Category 410 wool broadwoven fabrics declined from 160.2 million square yards in 1981 to 115.5 million in 1982. Production continued in a depressed state in 1983 with production for the first three quarters at 96.0 million square yards.

Imports increased from 20.9 million square yards in 1981 to 24.3 million in 1982 and to 29.0 million in 1983. Year ending January 1984 imports were 29.9 million square yards.

Imports as a percentage of production increased from 13.1 percent in 1981 to 21.0 percent in 1982. The ratio of imports to domestic production increased to 25.1 percent during the first three quarters of 1983.

Category 613pt.—Polyester/Cotton and Polyester/Rayon Lightweight Fabrics February 1984.

The U.S. imports of these fabrics enter under TSUSA Nos. 338.5035, 338.5036, 338.5039, 338.5041 and 338.5069. These TSUSA Numbers cover all imports of polyester/cotton and polyester/rayon plainweave fabrics weighing not over 5 ounces per square yard. Imports of these fabrics compete with domestic printcloth, batistes, broadcloths and other lightweight fabrics which are produced for sale.

U.S. imports of these lightweight fabrics from China were 12.7 million square yards during the year ending January 1984, up 17.9 percent from the 10.8 million square yards imported a year earlier. This is a sharp and substantial increase in imports into a sector already adversely affected by imports. These imports are being entered at duty-paid values well below the U.S. producer prices for comparable fabrics.

Approximately 36 percent of the imports of these lightweight fabrics were entered under TSUSA No. 338.5035—cotton/polyester grey fabrics. China was the third largest supplier of this TSUSA, accounting for 13 percent of the total imports. About 53 percent of these imports entered under TSUSA No. 338.5069—

polyester/rayon fabric. China was the largest supplier of this fabric, supplying 34 percent of the total imports. The textile bilaterals with the other major suppliers provide for specific limits on 1984 trade.

Domestic production for sale of these lightweight fabrics declined from 521 million square yards in 1981 to 361 million in 1982 to an estimated 313 million in 1983.

Imports of these fabrics increased from 57 million square yards in 1981 to 87 million in 1983. Imports for the year ending January 1984 were 91 million square yards.

The ratio of imports to domestic production increased from 10.9 percent in 1981 to 16.3 percent in 1982 to an estimated 27.8 percent in 1983.

Category 644—Man-Made Fiber Suits, Women's, Girls' and Infants'.

U.S. imports from China of Category 644 amounted to 13,662 dozen during the year ending January 1984. This total was up 431.0 percent from a year earlier. These imports from China more than tripled in 1983 to 7,300 dozen. In the first month of 1984 alone, imports soared 2,099.7 percent, compared with January 1983, to 6,865 dozen or only 8.7 percent below the total supplied by China during all of 1983. Only two other countries surpassed China in the quantity of Category 644 imports supplied during January 1984. These larger suppliers are subject to import restraint.

Domestic production of Category 644 peaked in 1977 and declined sharply thereafter. Production in 1982 was at a low for the past decade of 878,000 dozen, down 22 percent from 1981 and 69 percent from the 1977 record.

U.S. imports increased from 178,000 dozen in 1981 to 417,000 dozen in 1983, an increase of 134.3 percent.

The ratio of imports to domestic production of Category 644 was 27.4 percent in 1984 compared with 15.8 in 1981. The ratio, due to the substantial increase in imports, is likely to exceed 40 percent in 1983. The 1982 ratio for woven suits, which China exports, was 46.9 percent in 1982 and will be substantially higher in 1983.

Category 649—Brassieres, etc. Man-Made Fiber

Imports of Category 649 from China were 456,913 dozen during the year ending January 1984. This was 5.9 percent above the 431,505 dozen imported a year earlier. These imports reached 49,729 dozen in January 1984.

Domestic production of Category 649 declined from 19,630,000 dozen in 1981 to 18,495,000 dozen in 1982. Imports of Category 649 also declined in 1982 to 12,039,000 dozen from 13,256,000 in 1981. However, imports in 1983 regained most of the lost ground and year ending January 1984 imports were 14.2 percent higher than the previous year's level. The import to production ratio in 1982 was 65.1 percent, the second highest level on record.

April 10, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 16, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Categories 410, 613pt., 644 and 649, produced or manufactured in the People's Republic of China, and exported during the indicated ninety-day periods, in excess of the following levels of restraint:

Category	90-day level ¹
410	508,228 square yards (Mar. 31-June 29, 1984).
613pt.	4,448,002 square yards (Mar. 27-June 25, 1984).
644	4,782 dozen (Mar. 28-June 26, 1984).
649	159,920 dozen (Mar. 28-June 26, 1984).

¹ The levels of restraint have not been adjusted to reflect any imports exported after March 26 (Cat. 613), March 27 (Cats. 644 and 649) and March 30 (Cat. 410).

Textile products in Categories 410, 613pt., 644 and 649, which have been exported to the United States prior to the first day of each of the indicated ninety-day periods shall not be subject to this directive.

Textile products in Categories 410, 613pt., 644 and 649, which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports of wool and man-made fiber textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-

¹ In category 613, only TSUSA numbers 338.5035, 338.5036, 338.5039, 338.5041, and 338.5069.

making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9970 Filed 4-10-84; 3:56 pm]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Japan To Review Trade in Category 337 (Playsuits)

April 10, 1984.

On March 28, 1984 the Government of the United States requested consultations with the Government of Japan with respect to Category 337. This request was made on the basis of the Agreement of August 17, 1979, as amended and extended, between the Governments of the United States and Japan relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may request the Government of Japan to limit exports in Category 337, produced or manufactured in Japan and exported to the United States during the twelve-month period which began on January 1, 1984 and extends through December 31, 1984 at a level of 69,625 dozen.

A summary market disruption statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of this category under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of Japan, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Japan—Market Statement

Category 337—Cotton Playsuits

March 1984.

Imports of Category 337 from Japan were 62,954 dozen during the year ending January 1984, up 4.9 percent from a year earlier. January 1984 imports were 11,847 dozen, 19 percent of the total year ending amount and up 71.3 percent from January 1983. Japan's shipments were largely, 74 percent, infants' corduroy coveralls entered under TSUSA No. 383.5038. Japan was the second largest supplier of these coveralls, accounting for one-fourth of the total year ending January 1984 imports. These imports from Japan were entered at duty-paid landed values which are below the U.S. producer prices for comparable garments.

U.S. production of Category 337 declined from 3,550,000 dozen in 1981 to 3,194,000 dozen in 1982. Imports increased from 1,718,000 dozen in 1981 to 1,829,000 dozen in 1983 and to 1,939,000 dozen during the year ending January 1984. The ratio of imports to domestic production increased from 48.4 percent in 1981 to 58.5 percent in 1982 and continued at about that high level in 1983.

[FR Doc. 84-9971 Filed 4-10-84; 3:56 pm]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultation With The Government of Thailand To Review Trade in Category 605pt. (Spun Polyester Thread)

April 10, 1984.

On March 28, 1984 the Government of the United States requested consultations with the Government of Thailand with respect to Category 605pt. (spun polyester thread in TSUSA 310.9140). This request was made on the basis of the bilateral agreement of July 27, and August 8, 1983 between the Governments of the United States and Thailand relating to trade in cotton, wool and man-made fiber textiles and textile products. The agreement provides for consultations when the orderly development of trade between

the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments within 90 days of the request for consultations, CITA, pursuant to the terms of the bilateral agreement, may establish a specific limit of 302,851 pounds for the entry and withdrawal from warehouse for consumption of man-made fiber textile products in Category 605pt., produced or manufactured in Thailand and exported to the United States during the period beginning on March 28, 1984 and extending through December 31, 1984.

A summary market statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

The Government of the United States, pending agreement in consultations on a mutually satisfactory solution, has decided to control imports in this category during the 90-day consultation period (March 28, 1984-June 25, 1984) at 115,876 pounds. In the event the level established for Category 605pt. during the ninety-day period is exceeded, such excess amounts, if they are allowed to enter, shall be charged to the prorated twelve-month period described above.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the *Federal Register*.

Effective Date: April 16, 1984.

Anyone wishing to comment or provide data or information regarding the treatment of Category 605pt. (only TSUSA 310.9140) under the Bilateral Cotton, Wool and Man-Made agreement with the Government of Thailand, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in Category 605pt. (only TSUSA 310.9140), is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information

submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Thailand—Market Statement

Category 605pt.—Man-Made Fiber Sewing Thread

March 1984.

U.S. imports of Category 605pt.—TSUSA No. 310.9140 from Thailand were 374,735 pounds during the year ending January 1984. This compares with only 20,590 pounds imported a year earlier. Imports trended sharply upward in 1983 and January 1984 and 117,052 pounds entered in December 1983 and January 1984.

Imports from Thailand in Category 605pt. are polyester thread entered under TSUSA No. 310.9140. Thailand is the second largest supplier of this thread, accounting for 19 percent of the 1983 imports from all sources.

The polyester sales thread industry and market are being adversely affected by imports. Production declined from 7.1 million in 1981 to 5.7 million in 1982 to an estimated 5.6 million in 1983. Imports increased from 743,000 pounds to 905,000 pounds to 1,751,000 pounds, respectively, over the period. Imports for the year ending January 1984 were 2,057,000 pounds. The ratio of imports to production increased three-fold, rising from 10.5 percent in 1981 to 31.3 percent in 1983.

Imports of this thread from Thailand are being sold well below the sales price of the U.S. producers.

April 10, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 7, 1983 by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Effective on April 16, 1984, the directive of December 7, 1984 is amended to include a level of restraint of 115,876 pounds¹ for man-made fiber textile products in Category 605pt.,² produced or manufactured in Thailand and exported during the ninety-day period which began on March 28, 1984 and extends through June 25, 1984.

Textile products in Category 605pt.,² which have been exported to the United States before March 28, 1984 shall not be subject to this directive.

Textile products in Category 605pt.,² which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Thailand and with respect to imports of man-made fiber textile products from Thailand has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9972 Filed 4-10-84; 3:56 pm]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia To Review Trade in Category 639 (Women's, Girls' and Infants' Knit Shirts and Blouses)

April 10, 1984.

On March 29, 1984, the Government of the United States requested consultations with the Government of the Republic of Indonesia with respect to Category 639. This request was made on the basis of the agreement, as amended, between the Governments of the United States and the Republic of Indonesia relating to trade in Cotton, Wool, and Man-Made Fiber Textiles and

¹ The level of restraint has not been adjusted to reflect any imports exported after March 27, 1984.

² In Category 605 only TSUSA 310.9140.

Textile Products of October 13 and November 9, 1982.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, as amended, may establish a prorated specific limit of 60,880 dozen for the entry and withdrawal from warehouse for consumption of textile products in Category 639, produced or manufactured in Indonesia and exported to the United States during the period which began on March 29, 1984 and extends through the end of the agreement year, June 30, 1984. The limit may be adjusted to include prorated swing and carryforward.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution to invoke import control on this category during the 90-day consultation period (March 29-June 27, 1984) at a level of 68,948 dozen. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the level established during the period which began on March 29, and extends through June 30, 1984.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Anyone wishing to comment or provide data or information regarding the treatment of Category 639 under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 639—Women's, Girls' and Infants' Man-Made Fiber Shirts and Blouses
March 1984.

U.S. imports of Category 639 from Indonesia reached 261,499 dozen during the year ending January 1984, an increase of 518.1 percent from the previous year. January 1984 imports, at 76,120 dozen, were nearly two and one-half times higher than the total amount of these imports supplied by Indonesia during all of 1982. These imports from Indonesia are entered at duty-paid values below the U.S. producer prices for comparable shirts and blouses.

U.S. production of W.G.I. MMF knit blouses decreased 1.4 percent from 22,781,000 dozen in 1981 to 22,474,000 dozen in 1982.

Imports of these shirts and blouses increased 1.2 percent from 15,022,000 dozen in 1981 to 15,204,000 dozen in 1982. Imports during 1983 increased 21.1 percent to 18,408,000 dozen.

The ratio of imports to domestic production increased from 65.9 percent in 1981 to 67.7 percent in 1982. The 1983 ratio, based on the substantial increase in 1983 imports, will be higher.

April 10, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended and extended, between the Governments of the United States and Republic of Indonesia; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 16, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 639, produced or manufactured in Indonesia, and

exported during the ninety-day period which began on March 29, 1984 and extends through June 27, 1984, in excess of 68,948 dozen.¹

Textile products in Category 639 which have been exported to the United States prior to March 29, 1984 shall not be subject to this directive.

Textile products in Category 639 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Republic of Indonesia and with respect to imports of man-made fiber textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9897 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Levels for Certain Cotton Textile Products Exported From Egypt

April 10, 1984.

On February 14, 1984, a notice was published in the *Federal Register* (49 FR 1266) announcing that on January 31, 1984, the United States Government, under the terms of the Bilateral Cotton Textile Agreement of December 7 and 28, 1977, as extended, had requested the Government of the Arab Republic of Egypt to enter into consultations concerning exports to the United States of cotton sheeting in Category 313, produced or manufactured in Egypt.

Consultations have been held concerning this category, but no agreement has been reached on a mutually satisfactory solution. The United States Government has decided,

¹ The level has not been adjusted to reflect any imports exported after March 28, 1984.

therefore, pending further consultations with the Government of the Arab Republic of Egypt, to control imports of cotton textile products in Category 313 during the following period at the level indicated:

Category	Level	Period
313.....	8,955,699 square yards.	Jan. 31, 1984 to Dec. 31, 1984.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 313, exported during the indicated period in excess of the designated level.

EFFECTIVE DATE: April 16, 1984.

FOR FURTHER INFORMATION CONTACT:

Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 10, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington,
D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the terms of the Bilateral Cotton Textile Agreement of December 7 and 28, 1977, as extended, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on April 16, 1984, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 313 produced or manufactured in Egypt and exported during the following period, in excess of the indicated levels:

Category	Prorated level ¹	Restraint period
313.....	8,955,699 square yards.	(Jan. 31, 1984 to Dec. 31, 1984).

¹ The level of restraint has not been adjusted to reflect any imports exported after January 30, 1984.

Cotton textile products in Category 313 which have been exported to the United States prior to January 31, 1984 shall not be subject to this directive.

Cotton textile products in Category 313 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Arab Republic of Egypt and with respect to imports of cotton textile products from Egypt has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9953 Filed 4-12-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1984 a commodity to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: April 13, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 6, 1984, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (49 FR 929) of proposed addition to Procurement List 1984, October 18, 1983 (48 FR 48415).

After consideration of the relevant matter presented, the Committee has

determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractor for the commodity listed.

c. The action will result in authorizing small entities to produce a commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1984:

Class 8340

Shelter Half, Tent, Complete, 8340-01-026-6096

C. W. Fletcher,

Executive Director.

[FR Doc. 84-9975 Filed 4-12-84; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1984; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add and delete from Procurement List 1984 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: May 16, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1984, October 18, 1983, (48 FR 48415):

Class 8415

Liner, Cold Weather, Trousers, Men's Field, 8415-00-782-2922, 8415-00-782-2924, 8415-00-782-2925, 8415-00-782-2926, 8415-00-782-2927, 8415-00-782-2928, 8415-00-782-2929, 8415-00-782-2930

Class 8430

Disposable Footwear Cover, 8430-01-162-4453

SIC 7349

Janitorial Service, Federal Building, 355 Hancock Avenue, Athens, Georgia
Janitorial Service, U.S. Customs House, 220 N.E. 8th Avenue, Portland, Oregon
Janitorial Service, L. Mendel Rivers Federal Building, 334 Meeting Street and U.S. Post Office—Courthouse, Broad and Meeting Street, Charleston, South Carolina

Deletion

It is proposed to delete the following commodities from Procurement List 1984, October 18, 1983 (48 FR 48415):

Class 8440

Belt, Trousers, 8440-01-009-8293, 8440-01-009-8292, 8440-01-009-8290

C. W. Fletcher,

Executive Director.

[FR Doc. 84-9874 Filed 4-12-84; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Fire Support for Amphibious Warfare; Advisory Committee Meeting

The Defense Science Board Task Force on Fire Support for Amphibious Warfare will meet in closed session on May 1, 1984 at the BDM Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on May 1, 1984 the Task Force will review their findings on the basic requirements for fire support during amphibious warfare operations and discuss the preparation of their final report.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)), it has been determined

that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: April 9, 1984.

M. S. Healy,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 84-9932 Filed 4-12-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Finding of No Significant Impact; Army Helicopter Improvement Program (OH-58D/Aeroscout Helicopter)

AGENCY: Department of the Army, DOD.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Commander, U.S. Army Aviation Research and Development Command, ATTN: DRCPM-ASH-Q (Mr. Arthur Miller), 4300 Goodfellow Boulevard, St. Louis, MO 63120, Telephone (314) 263-1353.

SUMMARY: An Environment Assessment for the Development of OH-58D Aeroscout Helicopters and the field testing of these OH-58D helicopters has been prepared. This assessment is available for public review at the office of the Project Manager for the Army Helicopter Improvement Program (address above).

This project involves the development and testing of the Aeroscout Helicopter (OH-58D). This Aircraft will be capable of performing reconnaissance, standoff target acquisition, target designation and surveillance missions, under day or night in adverse weather conditions, for attack helicopter, air cavalry and field artillery units. Development and operation tests will be conducted on five OH-58D aircraft at Yuma Proving Ground, AZ and Fort Hunter Liggett, CA. Laboratory and flight tests of the OH-58D aircraft will involve a limited amount of laser operation. Within the laboratory, the laser beam is constrained and will not affect the environment. During the flight test and training operation phase, the laser will be operated on strictly controlled ranges with appropriate safety precautions enforced. All personnel and conspicuous animals will be cleared from ranges areas prior to laser operations. The precautions built into the OH-58D aircraft and controlled range firing of the laser will prevent or minimize environmental damage. Current plans

are to procure a total of 578 OH-58D aircraft for world-wide deployment with various operational units starting in 1985.

The Environmental Assessment indicates that this project is a major Army action which will have little impact on the environment. It has therefore been determined that an Environmental Impact Statement is not required. This determination was based upon consideration of the following factors which are discussed in detail in the Environmental Assessment:

a. There are no significant environmental impacts identified in the Assessment.

b. There are no serious impacts on physical resources.

The Department of the Army will receive comments on this action for a thirty day period from the date this notice appears in the Federal Register. Comments should be directed to Arthur Miller at the address shown above.

David L. Funk,

Col., GS, Chief, Aviation Systems Division.

[FR Doc. 84-9911 Filed 4-10-84; 10:49 am]

BILLING CODE 3710-08-M

Defense Intelligence Agency

Privacy Act of 1974; New System of Records

AGENCY: Defense Intelligence Agency, DOD.

ACTION: Notice of a new record system.

SUMMARY: The Defense Intelligence Agency is adding a new system of records to its inventory of systems of records subject to the Privacy Act of 1974. The system notice for the new system is set forth below.

DATE: This system shall be established as proposed without further notice on May 14, 1984, unless comments are received that would result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Helen E. Shuford (RTS-1), Defense Intelligence Agency, Washington, D.C. 20301. Telephone 202/695-0364.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the

Federal Register at: FR Doc. 83-12048 (48 FR 25950), June 6, 1983.

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.
April 9, 1984.

L DIA 0900

SYSTEM NAME:

Accounts Receivable, Indebtedness and Claims.

SYSTEM LOCATION:

Defense Intelligence Agency,
Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former active duty military personnel, current and former civilian employees, Reserve and National Guard personnel, dependents of employees and military personnel exchange officers and other individuals who may be indebted to the Defense Intelligence Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include but are not limited to documentation pertaining to telephone bills; dishonored checks; reports of survey; erroneous payments; property losses and damages; administratively determined indebtednesses; losses of funds; travel payments, to include: Travel orders, travel vouchers, statements of nonavailability of quarters and mess, paid receipts, and certifications of payment; delinquent accounts receivable from other Federal agencies including returned checks, medical service billings and collection records; summaries of reports from investigative activities such as the military investigative services, The U.S. Secret Service or the Federal Bureau of Investigation, reports from probate courts; reports from bankruptcy courts; credit reports, promissory notes; individual financial statements; correspondence from and to the debtor; applications for waiver of erroneous payments or for remission of indebtedness with supporting documentation; claims of individuals requesting additional payments with supporting documentation such as time and attendance records and leave and earnings statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5512; 5 U.S.C. 5513; 5 U.S.C. 5514; 5 U.S.C. 5584; 5 U.S.C. 5705; 10 U.S.C. 2274; 10 U.S.C. 2776; 31 U.S.C. 3322; 31 U.S.C. 3527; 31 U.S.C. 3702; 31 U.S.C. 3711; 31 U.S.C. 3718; 37 U.S.C. 1007; 40 U.S.C. 721-729.

PURPOSE(S):

Information is collected to determine eligibility for waiver of erroneous payments or additional payments for services rendered. Information is also used to support customer billings and collection of claims of the United States for money or property arising out of the activities of the Defense Intelligence Agency.

Information may be provided the activities of the other DoD components when necessary to effect collections or to resolve accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, USES, AND PURPOSE OF SUCH USES:

Information from this system may be disclosed to credit bureaus and credit reporting activities, the Comptroller General and the General Accounting Office, the Internal Revenue Service, the Federal Bureau of Investigation, U.S. Secret Service, state and local law enforcement authorities, trustees in bankruptcy and probate courts and other Federal agencies (for possible collection by offset). Disclosures may also be made to the Department of Justice for criminal prosecution, civil litigation, or investigation.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). When appropriate disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual in papers files.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Records are stored in locked cabinets when not in use.

RETENTION AND DISPOSAL:

Records are retained in office files through the fiscal year following the fiscal year in which final action was taken on the accounts receivable, indebtedness or claim. Records are then transferred to the Washington National Records Center where they are retained for up to nine years and then sold to

salvage paper companies to be destroyed by shredding, tearing, macerating, pulping or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Defense Intelligence Agency, Washington, D.C. 20301.

NOTIFICATION PROCEDURES:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: The Freedom of Information Office (RTS-1), Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request your full name, current address, telephone number and Social Security Number or date of birth. Providing of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not effect the individual's rights.

RECORD ACCESS PROCEDURES:

All requests for copies of records pertaining to yourself must be in writing. You must include in your request: your full name, current address, telephone number and Social Security Account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specific limit. Requests can be mailed to: The Freedom of Information Office (RTS-1), Defense Intelligence Agency, Washington, D.C. 20301. Providing the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Number will not bar access to these records.

CONTESTING RECORD PROCEDURES:

An individual, who disagrees with the content of any information contained in a record pertaining to him or her, may request an administrative review of the record. Such request should be submitted in writing to The Freedom of Information Office (RTS-1), Defense Intelligence Agency, Washington, D.C. 20301. It should include a statement setting forth the reasons for the disagreement with the contents of the record and should be supported by an appropriate supporting documentation.

An individual, who disagrees with the Agency's initial determination with respect to his or her request for access or amendment, may file a request for administrative review of that determination. Requests should be in writing and made within 30 days of the date of notification of the initial determination. The requester shall provide a statement setting forth the reasons for his or her disagreement with

the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: The Freedom of Information Office (RTS-1), Defense Intelligence Agency, Washington, D.C. 20301, or to the office listed in the initial denial letter.

RECORD SOURCE CATEGORIES:

Information obtained from Department of Defense and other Federal financial records systems; financial, educational and medical institutions; automated system interfaces; police and investigative officers; state bureaus of motor vehicles; Internal Revenue Service; Social Security Administration; Veterans Administration; the Office of Personnel Management and commercial credit reporting agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-0931 Filed 4-12-84; 8:45 am]

BILLING CODE 3810-01-M

Board of Visitors, Defense Intelligence College; Advisory Committee Meeting

The Defense Intelligence College (DIC) Board of Visitors (BOV) will meet in a partially closed session on May 22, 23 and 24, 1984, in Building T-28, Anacostia Annex, Washington, D.C.

The mission of the BOV is to provide advice on matters related to mission, policy, faculty, students, curricula, educational methods, research, and administration of the DIC, which fall under the purview of the Defense Intelligence Agency and the Secretary of Defense.

A meeting of the Board has been scheduled for May 22, 23 and 24, 1984, to provide written observations and recommendations on matters relating to the successful accomplishment of the mission assigned to the Defense Intelligence College.

In accordance with 5 U.S.C. App I, 10(d) (1976), it has been determined that this BOV meeting concerns matters listed in U.S.C., Section 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer,
Washington Headquarters Services,
Department of Defense.

April 9, 1984.

[FR Doc. 84-0929 Filed 4-12-84; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for Potential Navigation Improvements on the Kanawha River Navigation System

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Study efforts during this initial study phase were directed toward an evaluation of navigation improvement plans for Winfield Locks and Dam. Investigations at Marmet and London Locks and Dams will be undertaken in later study phases.

The Winfield Locks and Dam is located at Kanawha River, mile 31.1, in Putnam County, West Virginia. The project was authorized by the Public Works Administration in September 1933 and by the River and Harbor Act of 1935 and was placed in operation in September 1935 and completed in August 1937. The navigation project consists of a non-navigable high-lift dam with two lock chambers measuring 360' x 56'. The navigation dam provides a nine-foot navigable depth for a distance of 36.6 miles along the Kanawha River upstream to Marmet Locks and Dam.

SUPPLEMENTARY INFORMATION: 1.

Proposed Plan. The Additional Lock plan has the least first cost and the highest net benefits (NED plan). Therefore, of the four plans investigated during reconnaissance studies, this plan appears to be the most feasible and is the alternative plan retained for detailed study. Three sizes of additional locks have been investigated including 400' x 84', 600' x 110' and 800' x 110'.

Since completion of the Reconnaissance Report, survey level studies have proceeded on the Additional Lock Plan. Due to adverse impacts upon two local industries (ACF and Parkline, Inc.) located near the project, design modifications are being made to the plan to significantly reduce or eliminate these impacts.

Investigations have indicated that the additional lock can be moved nearer the present lock chamber than was shown in the Reconnaissance Report. Also, the alignment of the new lock has been skewed so that the upper lock wall and approach channel are rotated riverward away from the ACF plant. In addition to the 400' x 84', 600' x 110' and 800' x 110' lock sizes evaluated during Reconnaissance studies, a 720' x 110' size lock is now being investigated in detail.

2. Plans Considered. A number of alternative measures for modernizing or replacing Winfield L&D have been considered. After screening possible alternatives, four plans were considered potentially feasible and were evaluated in the Reconnaissance Report. These plans include constructing one new lock adjacent to the existing locks, together with the rehabilitation of one lock chamber and the dam; constructing two new locks in a bypass canal together with dam rehabilitation; and constructing a new locks and dam project at two locations, the Eleanor Site at mile 29.0 and the Fraziers Bottom Site at mile 27.2 (see Figure 1).

The Additional Lock Plan includes construction of one larger lock landward of the existing chambers. New approaches would be excavated upstream and downstream to provide safer and more direct access to the new lock. Three size chambers were investigated during reconnaissance studies: 800' x 110', 600' x 110', and 400' x 84'. Following construction of the new lock, Dam rehabilitation would be part of this plan, including replacement of the roller gates machinery and other major equipment. A bulkhead system would be added to make the dam comparable in safety and operating characteristics with other navigation projects on the Kanawha and Ohio Rivers.

The Canal Plan includes construction of two locks in a canal which bypasses the existing project on the right or northern bank. The canal would be about 1.2 miles long, with a minimum bottom width of 400'. The canal entrances are curved, and the upstream approach would not be as good as with the Additional Lock Plan. Three size main chambers have been investigated: 800' x 110', 600' x 110', and 600' x 84'. A chamber 400' x 84' appears to be the best size for the auxiliary lock. When the new locks are completed, the existing chambers would be deactivated. The navigation dam would be rehabilitated as previously described for the Additional Lock Plan.

A plan for a new locks and dam project has been investigated at a site near the Town of Eleanor. The plan consists of a new navigation dam and two new locks to be located on the right bank at mile 29.0, about 2 miles downstream from the existing project. Three chamber sizes have been investigated for the main lock: 800' x 110', 600' x 110' and 600' x 84'. The smaller auxiliary lock chamber probably would be 400' x 84'. The new locks would have generally straight approaches, both upstream and downstream. The navigation dam would

have five tainter gates, and provision would be made at the left abutment to accommodate a hydroelectric power plant.

Another site near Fraziers Bottom has been investigated for the location of a new navigation project. This plan consists of a new dam and two new locks to be located on the left bank at mile 27.2. This plan would provide long, straight navigation approaches, both upstream and downstream. The same lock sizes, as for the Eleanor Site, have been considered at Fraziers Bottom. The dam would also be similar, to the Eleanor Site with five tainter gates and provisions at the right abutment for a hydropower plant.

3. *Study Participants, Coordination and Scoping Process.* Participants in the Kanawha River Navigation Study in addition to Huntington District have included the U.S. Fish and Wildlife Service and the Louisville District. The Louisville District Navigation Support Center made estimates of lock capacities. Two universities performed environmental-baseline and system-impact studies.

A coordination letter, dated 6 July 1982 and announcing the initiation of the feasibility study, was sent to the U.S. Fish and Wildlife Service, the U.S. Geological Survey, the U.S. Environmental Protection Agency, the U.S. Soil Conservation Service, the Advisory Council on Historic Preservation, the West Virginia Department of Natural Resources and several other Federal agencies.

Combined environmental workshop and scoping meetings were held in the Huntington District on 14 July 1982 and 16 June 1983 to discuss environmental aspects of the Kanawha River study. Representatives from the U.S. Environmental Protection Agency, the U.S. Soil Conservation Service, the U.S. Fish and Wildlife Service, the U.S. Geological Survey and the West Virginia Department of Natural Resources attended one or both meetings.

Letters have been sent to most shippers and barge operators who use the Kanawha River requesting their comments concerning potential lock sizes being considered during the reconnaissance studies.

3a. *Public Involvement.* After completion of the Reconnaissance Report, a public meeting was held on 2 August 1983 in Winfield, West Virginia, to discuss the results of the Reconnaissance Study and to obtain public views.

There were approximately 220 persons in attendance, including a

congressional representative, several elected officials, representatives of the towing industry, industrial interest in the Kanawha Valley and state and Federal agencies, along with numerous landowners.

Subsequent to the public meeting, Corps personnel have met with representatives of the towing industry to discuss various aspects of the Winfield L&D alternative plans. In particular, were discussions relating to modifying the alignment of the additional lock to minimize the impact on local industries. The towing industry representatives generally agreed that a modification in the alignment of the additional lock approximately 3° relative to the existing locks, while not as desirable as a parallel lock, would be acceptable from a navigation aspect.

Huntington District personnel also have met with officials of ACF Industries following the public meeting to discuss modifications to the Additional Lock Plan which would minimize the impacts of project construction on the plant which is located just upstream from the present locks. Local ACF officials informally indicated that the parallel lock plan presented in the Reconnaissance Report would so severely impact the plant that the site probably would be abandoned. They did, however, indicate that some potential modifications being investigated, such as realigning the chamber and approach away from the plant site, would significantly reduce the impacts to the industry and that such a plan could probably be developed which would permit continued operation of the ACF plant at the present site.

3. *Study Areas Defined.* The effects of navigation improvements along the Kanawha River will range from the local effects of project construction to the regional effects of improved transportation system. The primary study area used to determine regional effects is composed of the four counties along the navigable portion of the Kanawha River—specifically, Mason, Putnam, Kanawha and Fayette counties. The reconnaissance-level engineering and environmental studies focused on the navigable portion of the Kanawha River, which extends from the town of Alloy in Fayette County to Point Pleasant in Mason County, a distance of 91 miles. The Kanawha River navigational systems consists of three locks and dams—London, at mile 82.8; Marmet, at mile 67.7; and Winfield, at mile 31.1. The lower 31 miles of the navigation channel are maintained by slackwater from the Gallipolis Locks and Dam on the Ohio River at mile 297.2

The major tributaries of the Kanawha River are the Pocatalico River, at mile 39.1; the Coal River, at mile 45.4; and the Elk River, at mile 57.8. A navigation channel is maintained on the lower 2.6 miles of the Elk River.

3c. *Plan Impacts.* The development of any of these plans at Winfield L&D would cause some unavoidable impacts on the resources and people of local communities. A new project at the Eleanor or Fraziers Bottom would raise the reach of river between the new and old dams 28 feet to the current Winfield navigation pool. All four plans require disposal sites, construction areas and flowage easements. Specific impacts of each plan are as follows:

1. Fraziers Bottom will require the acquisition of about 750 acres. Approximately 610 of these acres will be inundated due to the higher impoundment of the new dam as it backs slackwater up a total of 12.7 tributary stream miles. These backwaters will adversely impact the public park on Buffalo Creek. Of the total acreage taken by this plan, over 67% can be classified as prime or high quality agricultural lands. Relocations include 1.3 miles of highway and 14 homes. Additionally, this plan will destroy a viable population of the Salamander Mussel (*Simpsonia ambigua*), a species currently being considered for listing as Federally Endangered or Threatened Species. It will also create a net gain of 77 acres of wetland habitat.

2. A new facility at Eleanor will require approximately 450 acres. Of this total about 170 acres will be inundated as the new structures send slackwater up a total of 3.0 tributary stream miles. Almost 73% of the lands acquired are considered prime or high quality farmlands. A local sewage treatment facility and 7 homes will require relocation. The local water well field may also be impacted. A small net gain in wetlands may be realized.

3. The Canal Plan would require the acquisition of 410 acres, in addition to the 22 acres currently owned by the U.S. Government, totaling 432 acres. None of this area will be flooded by backwater since there will be no pool changes. One small unnamed stream will be filled with excavated material. Almost 83% of the total project acres required by this plan are prime or high quality farmlands. The local water wells and the sewage treatment plant may require substantial alterations or relocation, as will three local industries and a cemetery. Currently 23 mobile homes

existing in the area will be affected by this plan. There will be a loss of 60 acres of wetland habitat.

4. About 240 acres will need to be acquired for the Additional Lock Plan in addition to the 22 acres of currently owned government land, totaling 262 acres. Since there are no pool changes no new slackwater areas will be produced. The same unnamed stream filled with the Canal Plan will also be filled with this plan. Over 91% of the total area acquired for the Additional Lock Plan is prime or high quality farmland. The sewage treatment plant will not be impacted. Two industries will be affected, and the community water wells may also be affected. A local cemetery and 16 mobile homes will require relocation. About 50 acres of wetlands will be destroyed.

3d. *Consultation.* Consultation shall be conducted with the U.S. Fish and Wildlife Service and the Environmental Protection Agency during the final planning process pursuant to the requirements of the Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq. (Pub. L. 85-624), the Endangered Species Act, 16 U.S.C. 1531 et seq. (Pub. L. 93-205) and the Heritage Conservation and Recreation Service and State Historic Preservation Officer(s) pursuant to the National Historic Preservation Act of 1966 (80 Stat. 915) (Pub. L. 89-655), the Preservation of Historic and Archeological Data (88 Stat. 174) (Pub. L. 93-291) and EO 11954.

4. *Scoping Meetings.* Environmental scoping meetings were held on 14 July 1982 and 16 June 1983 at the Huntington District office with representatives from the U.S. Fish and Wildlife Service, EPA, and the West Virginia Department of Natural Resources in attendance. The meeting primarily concerned two traffic environmental impact studies and included presentation, by several district study participants and the consultants who are professional staff from Virginia Polytechnic Institute and State University. The impact study approach presented by the consultants was very well received by all the cooperating Federal and state agencies.

5. It is anticipated that the DEIS will be available for public review by December 1984.

6. Questions about the proposed action and DEIS can be answered by: Mr. Allan Elberfeld (Study Manager) or Mr. John Wright (Supervisory Ecologist), Huntington District, Corps of Engineers, 502 Eighth Street, Huntington, WV 25701.

Dated: April 2, 1984.

John W. Devens,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-9918 Filed 4-12-84; 8:45 am]

BILLING CODE 3710-GM-M

Department of the Navy

Privacy Act of 1974: Amendments to Systems of Records Notices

AGENCY: Department of the Navy (Marine Corps), DoD.

ACTION: Notice of amendments to systems of records.

SUMMARY: The U.S. Marine Corps proposes to amend five notices for systems of records subject to the Privacy Act of 1974. The specific changes to the notices being amended are set forth below.

DATE: The proposed action will be effective without further notice on May 14, 1984, unless comments are received which would result in a contrary determination.

ADDRESSES: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, D.C. 20380, telephone: (202) 694-1452.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93-579 were published in the *Federal Register* as follows:

FR Doc. 83-6317 (48 FR 10422) March 11, 1983

FR Doc. 83-6992 (48 FR 11312) March 17, 1983

FR Doc. 83-8688 (48 FR 14432) April 4, 1983

FR Doc. 83-12048 (48 FR 25964) June 6, 1983

FR Doc. 83-28621 (48 FR 48701) October 20, 1983

These changes do not require an altered system report as prescribed in 5 U.S.C. 522a(o) of the Privacy Act.

M. S. Healy,
OSD Federal Register Liaison Office,
Department of Defense.
April 9, 1984.

Amendments

MFD00003

System name:

Joint Uniform Military Pay System/
Manpower Management System
(JUMPS/MMS).

Changes:

Add the following paragraph after the *Authority for maintenance of the system*:

"Purpose(s):"

To maintain record of pay and personnel data on Marine Corps personnel who are on active duty for 31 days or longer and on certain civilians or other service personnel."

Routine use of records maintained in the system including categories of users, and the purpose of such uses:

Delete the text from the word "Internal" through the word "External" and substitute the following:

"See the Blanket Routine Uses at the beginning of the published Marine Corps systems notices in the *Federal Register*. In addition, the following routine uses apply:"

Delete the last paragraph and add the following:

"Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the United States Government will be liable for the losses the facility may incur."

MFDD0007

System name:

Examination Division Records System.

Changes:

System location:

Add the following address: "Marine Corps Central Design and Programming Activity, 1500 East 95th Street, Kansas City, Missouri 64131.

Categories of individuals covered by the system:

At the end of the paragraph delete the words "shortage of disbursing accounts." Substitute the following at the end of the paragraph: "pay or financial matters."

Categories of records in the system:

Delete paragraphs fourteen and fifteen beginning with the words "Reserve Personnel Military Pay Cases" and ending with the words "Reserve personnel."

Authority for maintenance of the system:

Delete the entire entries and substitute the following: "Federal Claims Collection Act of 1966, 80 Stat. 309; Debt Collection Act of 1982, Pub. L. 97-365; Title 10, U.S. Code 5031."

Add the following paragraph after the *Authority for maintenance of the system:*

"Purpose(s):

"To maintain records of all financial transactions on current or former Marine Corps personnel."

Routine uses of records maintained in the system including categories of users and the purposes of such uses:

Delete the entire entries and substitute the following:

"See the Blanket Routine Uses at the beginning of the published Marine Corps systems notices in the **Federal Register**. Additional, the following routine use(s) apply:

"To consumer reporting agencies for the purpose of allowing such agencies to prepare a commercial credit report on the debtor in accordance with the Federal Claims Collection Act of 1966 (31 U.S.C. 952)."

*Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:**Storage:*

Delete the entire entries and substitute the following: "Data is recorded on magnetic records, computer printouts, microform and file folders."

Retrievability:

Delete the entire entries and substitute the following: "Data is retrieved by name, social security number or taxpayer identification number of the individual."

Retention and disposal:

Delete the entire entries and substitute the following: "Various types of records in this system are maintained at different lengths of time or indefinitely."

Systems manager(s) and address:

Delete the entire entry and substitute the following:

"Commandant of the Marine Corps (Code FD); Headquarters, U.S. Marine Corps, Washington, D.C. 20380; Commanding Officer, Marine Corps

Finance Center, Kansas City, MO 64197; Director, Marine Corps Central Design and Programming Activity, Kansas City, MO 64131."

Notification procedure:

Delete the entire entries and substitute the following: "Information may be obtained from the system manager."

Record source categories:

In the last phrase, delete the word "and" and add the words "and the individual of record" to the end of the sentence.

MMN00006

System name:

Marine Corps Military Personnel Records (OOR/SRB)

Changes:

Add the following paragraph after the *Authority for maintenance of the system:*

"Purpose(s):

"To maintain personnel information on Marine Corps members necessary for management of personnel resources."

*Routine use of records maintained in the system including categories of users, and the purpose of such uses:**Add at the end:*

"Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the United States Government will be liable for the losses the facility may incur."

MMN00041

System name:

Nonappropriated Fund (NAF) Employee and Applicant Personnel Records

*Changes:**System name:*

Delete entry and substitute the following: "Nonappropriated Fund (NAF) Employee File".

System location:

Delete the entry and substitute the following paragraphs:

Primary system—Marine Corps Exchange Service Branch, Facilities and Services Division, Installations and Logistics Department (Code LFE), Headquarters U.S. Marine Corps, Washington, DC 20380.

Decentralized segments—Marine Corps commands employing NAF personnel (see the organizational elements of the Marine Corps as listed in the Department of the Navy address directory appearing in the **Federal Register**)."

Categories of individuals covered by the system:

Add the following sentence to the paragraph: "File covers NAF employees whose employment was terminated for cause and those who resigned while the subject of a formal investigative proceedings"

Categories of records in the system:

At the end of the paragraph, delete the words "and official correspondence" and substitute the following: "(to include the mailing address of the command from which the individual was separated)"

Authority for maintenance of the system:

Add the following to the paragraph: "Title 10, U.S. Code 5031"

Add the following paragraph after the *Authority for maintenance of the system:*

"Purpose(s):

To maintain NAF personnel records on employment acceptability, assignments, pay, promotion, performance evaluations, security, growth potential, leave, awards, benefits and entitlements, disciplinary and grievance proceedings, appeals, discrimination complaints, retirement/separation, terminations, physical evaluations and audits."

Routine uses of records maintained in the system, including categories of users, and the purposes of such uses:

Delete the first paragraph and substitute the following: "See the Blanket Routine Uses at the beginning of the published Marine Corps systems notices in the **Federal Register**. In addition, the following routine use(s) apply:"

Delete the third paragraph and substitute the following: "To investigative, security and law enforcement agents of Federal agencies

who have submitted written requests for access to the file, with justification thereof, pertaining to the conduct of Government business under their respective jurisdictions and the names of specified agents having a need for such access."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Delete the word "and" in the first line and insert a comma." Delete the word "tape" and substitute the words "tapes and disc."

Retrievability:

Delete the word "and," insert a comma and add the following words: "or NAF identification number."

Retention and disposal:

In the first line, delete the word "two" and substitute the word "five."

System manager(s) and address:

After the words "Commandant of the Marine Corps" add the words "(Code LFE)."

Notification procedure:

Delete the entry and substitute the following: "Information may be obtained from the system manager."

Record access procedures:

Delete the entry and substitute the following: "Requests should be addressed to the system manager."

MRS00001

System name:

Reserve Manpower Management and Pay System (REMMPS)

Changes:

Add the following paragraph after the Authority for maintenance of the system:

"Purpose(s):

To maintain record of pay and personnel data on members of the Marine Corps Reserve establishment."

Routine use of records maintained in the system including categories of users, and the purpose of such uses:

Delete the first and second paragraph and substitute the following:

"See the Blanket Routine Uses at the beginning of the published Marine Corps systems notices in the Federal Register. In addition, the following routine uses apply:"

Add at the end:

"Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the United States Government will be liable for the losses the facility may incur."

The revised portions of Systems MFD00003; MFD00007; MMN00006; MMN00041; and MRS00001 read as follows:

MFD00003

SYSTEM NAME:

Joint Uniform Pay System/Manpower Management System (JUMPS/MMS).

* * *

PURPOSE(S):

To maintain record of pay and personnel data on Marine Corps personnel who are on active duty for 31 days or longer and on certain civilians or other service personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See the Blanket Routine Uses at the beginning of the published Marine Corps systems notices in the Federal Register. In addition, the following routine uses apply:

The Attorney General of the U.S.—By officials and employees of the Office of the Attorney general in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts—By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U.S.—By the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U.S.—By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

By officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

Federal, state and local government agencies—By officials and employees of federal, state and local government through official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency initiate criminal or civil action against an individual on behalf of the U.S. Marine Corps, the Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U.S. Marine Corps, by the U.S. Marine Corps, the Department of the Navy, or the Department of Defense.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by this individual, the United States Government will be liable for the losses the facility may incur.

* * *

MFD00007

SYSTEM NAME:

Examination Division Records System.

SYSTEM LOCATION:

Marine Corps Finance Center, Examination Division, Kansas City, Missouri 64197; Federal Records Center, National Archives and Records Service, 2301 East Bannister Road, Kansas City, Missouri 64131; Washington National Records Center, Washington, D.C. 20409; National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132; Marine Corps Central Design and Programming Activity, 1500 East 95th Street, Kansas City, Missouri 64131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marines serving on active duty, personnel on the Marine Corps Retired List, Fleet Marine Corps reservists, personnel discharged or separated from active duty, active and inactive Reserve personnel, deceased personnel, and Marine Corps disbursing officers concerning pay or financial matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Unit Diaries—A chronological record of daily personnel events and history of active Marine Corps activities and organized Marine Corps Reserve Units.

Substantiating Vouchers—Supporting documents to substantiate pay adjustment items entered on military pay accounts.

Military Payrolls—An accounting and record of appropriated funds disbursed for military pay by name, social security number, amount of payment and check number or signature of member for cash payments.

Financial Returns—Travel vouchers, collection vouchers, public vouchers for services other than personal and civilian payrolls.

Military Pay Cases of Separated Personnel—A history of individual pay account from date of entry on active duty through date of separation, including as appropriate, replies to congressional inquiries; correspondence in connection with requests for remission and/or waiver of indebtedness; individual claims for pay and allowances including claims for travel allowances and responses thereto; records of participation in the Uniformed Services Savings Deposit Program, including personnel declared to be in a missing-in-action status; information surrounding the circumstances of a former member separated in an overpaid status, thus being indebted to the United States Government; cases contain substantiating documents such as military pay records, leave and earnings statements, documents relating to Board for Correction of Naval Records and other records and vouchers to

substantiate responses to all inquiries and payment or disapproval of claims.

Annual Separations Listings—An annual record of separation showing social security number, initials, type of separation, and the effective date of separation of Marines discharged, retired, transferred to the Fleet Marine Corps Reserve and deceased.

Annual Reserve Tax Listings—A record showing income tax information of Class II Reserve personnel.

Microfilm of Annual Wage and Tax Information of Active Duty Personnel—Contains cumulative totals of taxable pay earned and taxes withheld, social security wages and taxes withheld.

Microfilm of Quarterly Social Security Wages Data—Contains social security number, name and amount of wages reported to the Social Security Administration on a quarterly basis.

Microfilm of Master Allotment File—Contains information concerning the allotment status of active Marines, such as start and stop dates, allotment purpose codes, money amount of allotments, and name and address of allottee.

Microfiche and Microfilm of Field and Alpha Locators—A record of personnel data of Marines on active duty, listed numerically by social security number and alphabetically by name.

Microfiche of Marine Corps Officers Lineal List—A record of Marine Corps officers on active duty showing social security number, name, rank, date of rank, permanent rank, date of birth, date first commissioned, and pay entry base date.

Active Military Pay Cases—A file of each Marine on active duty containing military pay records opened semiannually prior to July 1, 1973 and related miscellaneous pay documents.

Uniformed Service, Savings Deposit Accounts of Personnel Declared Missing In Action—A record of deposits and withdrawals of Marine Corps personnel in a missing-in-action status containing member's name, social security number, balance of deposits, and name and address of the designated beneficiary to whom monies are disbursed.

Federal Housing Administration (FHA) Files—Files contain social security number, name, FHA account number, due date of insurance premiums and record of bills and payments.

U.S. Treasury Department, Internal Revenue Service Form 941c—A record effecting adjustment of social security wages, previously reported or nonreported, containing the member's name, social security number, military pay group, period covered and the monetary amount of adjustment.

Marine Corps Disbursing Officers Shortage Accounts—File contains accountability of losses, letters and vouchers pertaining thereto.

Indebtedness Cases—Files contain the debtor's name, social security number, current mailing address, the reason for indebtedness and correspondence relating thereto, personal financial information provided by the debtor, receipts of payments, control book, cash record, debt ledger, collection agent's ledger, collection vouchers, personal information provided by credit bureau reports, indebtedness record card, debt control card, accountability statements, complete military pay accounts, General Accounting Office inquiries, General Accounting Office Notices of Exception, legal notices pertaining to bankruptcy, tax certificates and other miscellaneous substantiating records and vouchers relating to the indebtedness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, 80 Stat. 309; Debt Collection Act of 1982, Pub. L. 97-365; Title 10, U.S. Code 5031

PURPOSE(S):

To maintain records of all financial transactions on current or former Marine Corps personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Blanket Routine Uses at the beginning of the published Marine Corps systems notices in the *Federal Register*. Additionally, the following routine use(s) apply:

To consumer reporting agencies for the purpose of allowing such agencies to prepare a commercial credit report on the debtor in accordance with the Federal Claims Collection Act of 1966 (31 U.S.C. 952).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Data is recorded on magnetic records, computer printouts, microform and file folders.

RETRIEVABILITY:

Data is retrieved by name, social security number or taxpayer identification number of the individual.

RETENTION AND DISPOSAL:

Various types of records in this system are maintained at different lengths of time or indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps
(Code FD), Headquarters, U.S. Marine
Corps, Washington, D.C. 20380;
Commanding Officer, Marine Corps
Finance Center, Kansas City, MO 64197;
Director, Marine Corps Central Design
and Programming Activity, Kansas City,
MO 64131.

NOTIFICATION PROCEDURE:

Information may be obtained from the
system manager.

RECORD AND CATEGORIES:

Marine Corps activities having the
responsibility of collecting data and
preparing reports and documents:
Headquarters U.S. Corps; credit unions;
credit bureaus; insurance companies;
courts financial institution and the
individual of record.

**SYSTEMS EXEMPTED FROM CERTAIN
PROVISIONS OF THE ACT:**

None.

MMN000006

SYSTEM NAME:

Marine Corps Military Personnel
Records (OOR/SRB).

PURPOSE(S):

To maintain personnel information on
Marine Corps members that is necessary
for management of personnel resources.

**ROUTINE USE OF RECORDS MAINTAINED IN THE
SYSTEM INCLUDING CATEGORIES OF USERS,
AND THE PURPOSE OF SUCH USERS:**

See the Blanket Routine Uses at the
head of the published Marine Corps
systems notices in the Federal Register.
In addition to the Blanket Uses, the
following routine uses apply.

By officials and employees of the
Coast Guard and National Guard in the
performance of their official duties
relating to screening members who have
expressed a positive interest in an
interservice transfer, enlistment,
appointment or acceptance.

By agents of the Secret Service in
connection with matters under
jurisdiction of that agency upon
presentation of credentials.

By private organizations under
government contract to perform random
analytical research into specific aspects
of military personnel management and
administrative procedures.

By officials and employees of the
American Red Cross and Navy Relief
Society in the performance of their
duties. Access will be limited to those
portions of the member's record

required to effectively assist the
member.

By officials and employees of the
Sergeant at Arms of the U.S. House of
Representatives in the performance of
official duties related to the verification
of Marine Corps service of Members of
Congress. Access will be limited to
those portions of the member's record
required to verify service time, active
and reserve.

The Attorney General of the United
States or his authorized representatives
in connection with litigation, law
enforcement, or other matters under the
direct jurisdiction of the Department of
Justice or as carried out as the legal
representative of the Executive Branch
agencies.

State, local and foreign (within Status
of Forces agreements) law enforcement
agencies or their authorized
representatives in connection with
litigation, law enforcement, or other
matters under the jurisdiction of such
agencies.

Information as to current military
addresses and assignments may be
provided to military banking facilities
who provide banking services overseas
and who are reimbursed by the
Government for certain checking and
loan losses. For personnel separated,
discharged or retired from the Armed
Forces, information as to last known
residential or home of record address
may be provided to the military banking
facility upon certification by a banking
facility officer that the facility has a
returned or dishonored check negotiated
by the individual or the individual has
defaulted on a loan and that if
restitution is not made by the individual,
the United States Government will be
liable for the losses the facility may
incur.

MMN00041

SYSTEM NAME:

Nonappropriated Fund (NAF)
Employee File.

SYSTEM LOCATION:

Primary system—Marine Corps
Exchange Service Branch, Facilities and
Services Division, Installations and
Logistics Department (Code LFE),
Headquarters U.S. Marine Corps,
Washington, DC 20380.

Decentralized segments—Marine
Corps commands employing NAF
personnel (see the organizational
elements of the Marine Corps as listed
in the Department of the Navy address
directory appearing in the Federal
Register).

**CATEGORIES OF INDIVIDUALS COVERED BY THE
SYSTEM:**

Personnel, to include off-duty military
personnel, applying to or hired by
Marine Corps commands whose salaries
are paid with NAF. File covers NAF
employees whose employment was
terminated for cause and those who
resigned while the subject of a formal
investigative proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain any of the
following documents and information on
NAF employees—name, home address,
home and office telephone number,
social security number, employee
application, personnel history statement,
reference data, education, work
experience, photograph, work permit,
union participation, date of birth,
emergency contact information,
employee number, military grade (if
applicable), job description, job
assignment, application for group
insurance and retirement plans (or
signed waiver), leave and pay data,
performance reviews, reports of
physical examinations, reports of
accident/traffic violations, warning
notices of excessive absence and
tardiness, reports of grievances
hearings/disciplinary action, record of
court attendance, certified copy of
completed military orders for any
annual duty tours with recognized
military Reserve organizations, security
clearance data, bad debt notices,
employment compensation documents,
commendations and awards, separation
information (to include the mailing
address of the command from which the
individual was separated).

**AUTHORITY FOR MAINTENANCE OF THE
SYSTEM:**

5 U.S.C. 301, 10 U.S.C. 5031.

PURPOSE(S):

To maintain NAF personnel records
on employment acceptability,
assignments, pay, promotion,
performance evaluations, security,
growth potential, leave, awards, benefits
and entitlements, disciplinary and
grievance proceedings, appeals,
discrimination complaints, retirement/
separation, terminations, physical
evaluations and audits.

**ROUTINE USES OF RECORDS MAINTAINED IN
THE SYSTEM, INCLUDING CATEGORIES OF
USERS AND THE PURPOSES OF SUCH USES:**

See the Blanket Routine Uses at the
beginning of the published Marine Corps
systems notices in the Federal Register.
In addition, the following routine use(s)
apply:

By court order in connection with matters before a Federal, state or municipal court.

To investigative, security and law enforcement agents of Federal agencies who have submitted written requests for access to the file, with justification, thereof, pertaining to the conduct of Government business under their respective jurisdictions and the names of specified agents having a need for such access.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, binders and magnetic tapes and discs.

RETRIEVABILITY:

Alphabetically, by social security number or NAF identification number.

RETENTION AND DISPOSAL:

Records are maintained for period of employment plus five years. Records of employees transferring to another NAF activity are transferred to the new activity. Records of separated employees are transferred to the National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (Code LFE), Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager.

RECORD ACCESS PROCEDURE:

Request should be addressed to the system manager.

* * * * *

RECORD SOURCE CATEGORIES:

Employee applications, personal interviews, former employers and supervisors, investigative and law enforcement agencies, originators of correspondence, employee references, schools, physicians and employing command.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

MRS00001

SYSTEM NAME:

Reserve Manpower Management and Pay System (REMMPs).

* * * * *

PURPOSE(S):

To maintain record of pay and personnel data on members of the Marine Corps Reserve establishment.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND THE PURPOSE OF SUCH USES:

See the Blanket Routine Uses at the beginning of the published Marine Corps systems notices in the *Federal Register*. In addition, the following routine uses apply:

The Attorney General of the U.S.—By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts—By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U.S.—By the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof, any joint committee of Congress of subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U.S.—By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Information as to current military addresses and assignment may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility office that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the United States Government will be liable for the losses the facility may incur.

* * * * *

[FR Doc. 84-9930 Filed 4-12-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Varibus Corp.; Proposed consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Varibus Corporation and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by May 14, 1984.

ADDRESS: Send comments to: Settlements Division, Office of Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Settlements Division, Office of Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-5665. (Copies of the Consent Order may be obtained free of charge by writing or calling this office.)

SUPPLEMENTARY INFORMATION: On March 7, 1984, the ERA executed a proposed Consent Order with Varibus Corporation, 285 Liberty Street, Beaumont, Texas 77701. Under 10 CFR 205.119(b), a proposed Consent Order which involves the sum of \$500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the *Federal Register* requesting comments concerning the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

1. The Consent Order

Varibus Corporation (Varibus) is a wholly owned subsidiary of Gulf States Utilities Company (Gulf States) and during the period October 1, 1973 through October 31, 1974 carried on the trade or business of purchasing petroleum products and reselling these products, without substantially changing their form, to Gulf States. ERA audited

Varibus' compliance during this period with the Federal Petroleum Price and Allocation Regulations (Regulations) most recently codified in 10 CFR Parts 205, 210, 211, 212, 213, and issued a Proposed Remedial Order (PRO) to Varibus requiring refunds to Gulf States for alleged overcharges in violation of the Regulations. The PRO is now pending before DOE's Office of Hearings and Appeals (OHA). ERA has recognized in its filings with OHA that the amount of overcharges set forth in the PRO should be reduced to \$1,017,841.98 plus interest. Varibus and Gulf States have also filed in a separate proceeding an Application for Exception and Request for Reconsideration (Application) with OHA. The Application requests OHA to rule that the disputed sales be excepted from the regulations; but, if the regulations are deemed applicable, then to permit Varibus to include non-product costs in the computation of the sale price.

Varibus and ERA each believes that its position is meritorious. However, to resolve the issues raised by the audit without further litigation on the PRO, Varibus and ERA would enter into the Consent Order. Varibus would do so without admitting it has violated any provision of the Regulations. The Consent Order would resolve all administrative and civil judicial claims, demands, liabilities, or causes of action between DOE and Varibus with respect to the audit period, save for that part of the Application which requests that the sales involved be excepted from the Regulations. The significant terms of the proposed consent order are as follows:

A. Within five days after the Consent Order becomes effective, Varibus and Gulf States will withdraw that part of their Application pertaining to recovery of Varibus' non-product costs and Varibus will deposit \$750,000 in an escrow account. This amount represents payment of overcharges plus interest to the date of the Consent Order.

B. Upon receipt of a final disposition by OHA of the remaining portion of the Application, Varibus will pay Gulf States the amount of \$750,000 plus accrued interest as provided in the escrow agreement, reduced in proportion to any exception relief OHA may grant. Gulf States has agreed to file applications with the regulatory bodies to which it is subject to pass through to its customers the entire amount of any payments received under the Constant Order.

II. Submissions of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent

Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation: "Comments on Varibus Corporation Consent Order." The ERA will consider all comments it receives by 4:30 p.m., e.s.t., within 30 days after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C. on the 30th day of March 1984.

Avrom Landesman,

Acting special Counsel, Economic Regulatory Administration.

[FR Doc. 84-9987 Filed 4-12-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee

Date and time: May 1 (9:00-5:00) and May 2 (9:00-5:00), 1984

Location: Fusion Engineering Design Center, Oak Ridge National Laboratory, FEDC Building, P.O. Box Y, Oak Ridge, TN 37830.

Contact: Rosalie Weller, Office of Fusion Energy, ER-50, U.S. Department of Energy, Mail Stop G-226, Washington, D.C. 20545, Phone: (301)-353-3347.

Purpose of the Committee

To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Tentative Agenda

(1). Role of Industry in Fusion. Review Charge to Panel—Ron Davidson. Final Report of Panel 7—Forsen and Thompson

(2). Supporting Concepts. Review Charge to Panel—Ron Davidson. Status Report on Panel Activities—Lee Berry.

(3). Tokamak Fusion Core Experiment (TFCX)—Conceptual Designs, Status and Plans—Furth and Schmidt.

(4). New Charge Areas to MFAC—Ron Davidson and John Clarke

(5). MFAC Discussion

(6). Other Business

(7). Public Comment and Discussion (10 Minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available approximately 30 days following the meeting.

Issued at Washington, D.C., on April 9, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-9944 Filed 4-12-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

[Docket NO. CP84-291-000]

April 6, 1984.

Take notice that on March 9, 1984, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP84-291-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to abandon certain facilities and points of delivery and to establish an additional point of delivery to an existing wholesale customer under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia proposes and asserts the following:

1. The abandonment of approximately 0.3 mile of 6 and 8-inch pipeline located in Barbour County, West Virginia.

Due to operational changes in this portion of Columbia's pipeline system, continued operation of this pipeline segment is no longer necessary. An existing 12-inch pipeline, which parallels the pipeline segment proposed for abandonment, has adequate capacity to meet all operational requirements.

2. The abandonment of ten points of delivery to Columbia Gas of Ohio, Inc. (COH), and 0.6 mile of 2-inch pipeline and related facilities located in

Columbiana County, Ohio, by sale to COH and the establishment of a new point of delivery to COH.

The sole utilization of the segment of pipeline proposed for abandonment, by sale to COH, is to supply ten points of delivery to COH through which COH serves ten consumers. COH has agreed to acquire this segment of pipeline at its net depreciated cost of approximately \$11,200. Columbia would continue to supply the segment of pipeline to be acquired by COH via the existing interconnection, which would constitute a new point of delivery to COH.

3. The abandonment of approximately 0.4 mile of 2-inch pipeline located in Licking County, Ohio.

The market area previously supplied from the segment of pipeline proposed for abandonment is now being supplied from another Columbia pipeline.

4. The abandonment of approximately 0.9 mile of 6-inch pipeline located in Coshocton County, Ohio.

This segment of pipeline is being abandoned due to the extension of strip mining operations in this area. Columbia's other pipelines in this area are capable of transporting the volumes currently transported via the segment proposed for abandonment.

5. The abandonment of a point of delivery to COH and related facilities located in Scioto County, Ohio.

The point of delivery to COH, which is proposed for abandonment herein, previously served the Empire Detroit Steel Plant which has been divided and sold to two separate companies.

American Budkeye Corporation now owns the portion of the plant which this point of delivery supplies. American Budkeye Corporation does not operate any facilities at this location which utilize natural gas. The existing measuring and regulating facilities would be removed when this point of delivery is abandoned.

6. The abandonment of approximately 1.1 miles of 4 and 8-inch pipeline located in Belmont County, Ohio.

Columbia constructed an 8-inch gas supply pipeline in 1981, which parallels the 1.1-mile segment of pipeline proposed for abandonment herein. The segment of line proposed for abandonment was retained in service in order to supply several points of delivery to COH, through which COH served mainline consumers. These points of delivery have now been relocated to the new 8-inch pipeline.

7. The abandonment of approximately 2.0 miles of 8-inch pipeline located in Wetzel County, West Virginia.

Due to building construction along the existing pipeline rights-of-way the continued operation of the pipeline

segment proposed for abandonment would have required a potential replacement and relocation. Since this pipeline segment's sole utilization was to supply three points of delivery to Columbia Gas of West Virginia, Inc. (CWV), through which CWV served mainline residential consumers, which points of delivery could be relocated to a parallel Columbia pipeline, the partial relocation was not justifiable. All of the points of delivery have been relocated to the parallel pipeline and continued operation of the pipeline segment proposed for abandonment is no longer required.

8. The abandonment of fifteen points of delivery to COH and approximately 1.3 miles of 2, 4, and 6-inch pipeline located in Homes County Ohio, by sale to COH.

As a result of the construction of gas supply facilities in 1981, the sole utilization of the segment of pipeline proposed for abandonment by sale to COH is to supply fourteen points of delivery from Columbia to COH, through which COH serves mainline consumers, and one point of delivery to COH's Millersburg, Ohio, distribution system. Columbia Transmission has agreed to sell this pipeline segment to COH for \$1.00. Columbia would continue to supply the section of pipeline to be acquired by COH via an existing point of delivery.

9. The abandonment of a point of delivery to CWV and related facilities located in Wayne County, West Virginia.

The point of delivery proposed for abandonment was utilized by CWV to serve a mainline consumer, who owned and operated a service line through which he delivered gas to twenty additional consumers. The consumer's service line deteriorated to the point that it was no longer operable. All of the consumers served therefrom converted to alternative fuel sources in preference to replacing the service line.

10. The abandonment of approximately 0.6 mile of 1-inch pipeline located in Barbour County, West Virginia.

The sole utilization of the pipeline proposed for abandonment has been to supply certain mainline consumers. All of these consumers have been converted to alternative fuels.

11. The abandonment of approximately 0.5 mile of 6-inch pipeline located in Fulton County, Pennsylvania.

The market areas previously supplied from the segment of pipeline proposed for abandonment are now being supplied from a parallel Columbia pipeline.

12. The abandonment of a point of delivery to COH and related facilities located in Carroll County, Ohio.

The point of delivery to COH which is proposed for abandonment herein was previously utilized by COH to serve the Whitacre Greer Fireproofing Company. This industrial plant is in the process of being dismantled.

13. The abandonment of approximately 0.3 mile of 5-inch pipeline, a point of delivery to COH and related facilities, located in Stark County, Ohio.

The pipeline and point of delivery to COH proposed for abandonment herein have been utilized by COH to serve the U.S. Ceramic Tile Company (Ceramic). Ceramic currently is being served by a gas supplier other than COH and in November 1982 requested that COH remove its measuring facilities to preclude any further charges by COH.

14. The abandonment of two points of deliveries to Dayton Power and Light Company (DP&L) and related facilities located in Clinton County, Ohio.

The points of deliveries proposed for abandonment herein were previously utilized by DP&L to serve two customers. DP&L now serves these customers from a DP&L distribution system and has not utilized the points of delivery from Columbia since 1977. Therefore, DP&L has advised Columbia that the points of deliveries proposed for abandonment are no longer required.

15. The abandonment of a point of delivery to COH and related facilities located in Fairfield County, Ohio.

The point of delivery to COH proposed for abandonment previously supplied an isolated COH distribution system in the Pickerington, Ohio, area. COH has integrated this isolated distribution system into the Pickerington distribution system and has advised Columbia that it no longer requires the point of delivery proposed for abandonment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 84-9038 Filed 4-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-296-000]

**Eastern Shore Natural Gas Co.;
Application**

April 9, 1984.

Take notice that on March 12, 1984, Eastern Shore Natural Gas Company (Applicant), P.O. Box 615, Dover, Delaware 19901, filed in Docket No. CP84-296-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of Applicant's firm transportation service to Delmarva Power & Light Company (Delmarva), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests that it be permitted to reduce the firm transportation service of up to 4,000 Mcf of natural gas per day, which it has rendered to Delmarva under Applicant's Rate Schedule T-1 since 1957, to a maximum transportation contract demand of 3,000 dt equivalent of natural gas per day. The stated purpose of this request is to reflect a reduction in transportation contract demand agreed to between Applicant and Delmarva as part of the settlement agreement approved by the Commission in a letter order dated February 16, 1984, in Docket Nos. RP82-23-000 and RP83-94-000.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas

Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-9039 Filed 4-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-287-000]

**Northern Natural Gas Co.; Division of
InterNorth, Inc.; Request Under
Blanket Authorization**

April 6, 1984.

Take notice that on March 8, 1984 Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-287-000 as supplemented March 27, 1984, a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to transport for delivery by displacement natural gas for several low priority end-users (see Appendix A) under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the proposed transportation service would be performed pursuant to a transportation agreement (Agreement) between Northern and PNG Energy Company (PNG) dated June 22, 1983, as amended. It is explained that the Agreement provides for the transportation and delivery by displacement of 50,000 Mcf of natural gas per day on behalf of the end-users for use as boiler fuel.

Northern states that PNG, as agent for the end-users, agrees to deliver or cause to be delivered natural gas volumes to Northern at the existing interconnection between the facilities of Northern and Oklahoma Natural Gas Company (ONG)

located in Woodward County, Oklahoma, and/or the existing interconnection between the facilities of Northern and Delhi Gas Pipeline Corporation (Delhi) located in Beaver County, Oklahoma. Northern would transport thermally equivalent volumes of gas for redelivery by displacement, for the account of PNG as agent for the end-users, to the existing facilities of Transcontinental Gas Pipe Line Corporation (Transco) in Cameron Parish, Louisiana. For this transportation service, Northern states that it would charge 13.32 cents per Mcf of gas delivered to Northern at the Woodward County receipt point and 10.90 cents per Mcf of gas delivered to Northern at the Beaver County receipt point. In addition, Northern states that it would charge an initial added incentive charge (AIC) of 2.5 cents per Mcf subject to Paragraph 7.5 of the Agreement and at no time would this AIC exceed 5.0 cents. Northern states that these rates are based on existing rate schedules of Northern's FERC Gas Tariff.

Northern states that Transco would transport the subject volumes from Cameron Parish, Louisiana, to the end-users in North Carolina and South Carolina pursuant to its Contract Carriage Program (CCP) transportation authorization. It is explained that in the event that Transco's CCP authorization is not extended beyond its current expiration date of March 31, 1984, Transco would begin the subject transportation under the 120-day automatic authorization provisions of Section 157.209(a) of the Commission's Regulations and subsequently file for authorization to transport the gas for a longer term under the prior notice procedure of the Commission's Regulations.

Northern has indicated that Energy Consultants, Inc., is a broker in the instant application and receives 5.0 cents per Mcf of gas sold to the end-users.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall

be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Acting Secretary.

APPENDIX A

End-user	Peak day deliveries
1. Diamond Shamrock Chemical	400
2. General Tire Co.	1,500
3. Lance, Inc.	675
4. Celanese Tech. Center	400
5. Celanese Office Building	125
6. Deep River Dyeing	325
7. Ashboro Weaving (Klopman)	250
8. Cone Mills—Cent. Pwr.	1,000
9. Greensboro Finishing	500
10. Pfizer Chemical Div.	1,000
11. NC Baptist Hospital	750
12. Wake Forest Univ.	675
13. Hillcrest Veneer Plant	100
14. Burlington House	1,500
15. Fiber Industries	7,200
16. Cone Mills—Salisbury	850
17. Clyde Fabrics	525
18. JP Stevens—Boger City	325
19. Mohican Mills	1,250
20. Union Bleachery	1,750
21. JP Stevens—Stater	650
22. Milliken—Enterprise	725
23. Milliken—Gayley	925
24. JP Stevens—Monaghan	450
25. JP Stevens—Dunean	725
26. JP Stevens—W Horse	525
27. Fiber Industries	1,500
28. Michelin Tire Corp.	2,500
29. JP Stevens—Chem	250
30. JP Stevens—Estes	400
31. JP Stevens—Appleton	525
32. Spartan Mills—Howard	425
33. Hoechst Fibers	9,500
34. Milliken—Createx (Serv.)	650
35. Spartan—Startex	750
36. Milliken—Dewey (Chem)	350
37. Spartan—Montgomery	650
Totals	42,600

[FR Doc. 84-9940 Filed 4-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-289-002]

Panhandle Eastern Pipe Line Co.; Petition To Amend

April 9, 1984.

Take notice that on March 9, 1984, Panhandle Eastern Pipe Line Company (Petitioner), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP82-289-002 a petition to amend the order issued July 29, 1982, in Docket No. CP82-289-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the extension of the term and reduce certain limitations on an existing authorized transportation service for Toledo Edison Company (Toledo Edison), all as more fully set forth in the petition to amend

which is on file with the Commission and open to public inspection.

Petitioner states that it was authorized July 29, 1982, in Docket No. CP82-289-000 to transport up to 5,000 Mcf of gas per day on an interruptible basis for Toledo Edison for a period of two years from Toledo Edison's distribution company in Defiance, Ohio, to Toledo Edison's electric generating plant, also in Defiance, Ohio. Petitioner further states that Toledo Edison is one of its industrial customers; therefore, Petitioner only transports volumes in excess of the 1,500 Mcf per day maximum volumes which Petitioner delivers under its industrial sales contract.

Petitioner states that it has negotiated an amended transportation agreement with Toledo Edison. In accordance with the amended agreement, Petitioner requests the Commission to amend the July 29, 1982, order to extend the term of the transportation service for successive terms of one year until cancelled by either party upon 60 days notice. Petitioner further proposes to reduce the volume limitation which applies to the transportation service from 1,500 Mcf per day to 500 Mcf per day. No other change in the service is proposed.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-9941 Filed 4-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C179-194-001, et al.]

Sabine Corp.; Redesignation

April 9, 1984.

Take notice that on March 20, 1984, Sabine Corporation (Sabine) of 1200 Mercantile Bank Building, Dallas, Texas 75201, filed an application to amend certain certificates currently held by Sabine Production Company (Sabine Production) to show Sabine as certificate holder and to redesignate the related rate schedules listed in the attached Appendix.

On January 1, 1984, as a result of a corporate merger, Sabine Corporation acquired all interests formerly held in the name of Sabine Production Company. Sabine Production ceased to exist effective with the merger into Sabine on January 1, 1984. Sabine requests that the Commission redesignate the Certificates of Public Convenience and Necessity heretofore issued to Sabine Production and related gas rate schedules and the Small Producer Certificate heretofore issued to Sabine Production to reflect the name change resulting from the merger of Sabine Production into Sabine, in all existing and pending Commission proceedings as listed in the attached Appendix.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 23, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

APPENDIX

Docket No.	Original Sabine Production Company rate schedule No.	Sabine Corporation rate schedule No.	Purchaser	Location
CI 79-194	11	1	Texas Eastern Transmission Corporation	Breton Sound Blk 53 Field Plaquemines Parish, Louisiana.
CI 79-175	12	2	Northern Natural Gas Company	Ellis County, Oklahoma.
CI 79-179	3	3	Transwestern Pipeline Company	Eddy county, New Mexico.
CI 79-174	4	4	El Paso Natural Gas Company	West Parkway Field, Eddy County, New Mexico.
CI 79-180	15	5	United Gas Pipeline Company	Carthage Field, Panola County, Texas.
CI 79-181	16	6	Panhandle Eastern Pipeline Company	Avard Field, Woods County, Oklahoma.
CI 79-182	17	7	El Paso Natural Gas Company	Millman Field, Eddy County, New Mexico.
CI 79-183	18	8	Florida Gas Transmission Company	Oakvale Field, Jefferson Davis County, Mississippi.
CI 79-184	19	9	Northern Natural Gas Company	N.E. Peek Field, Ellis County, Oklahoma.
CI 79-195	110	10	El Paso Natural Gas Company	Reydon Field, Roger Mills County, Oklahoma.
CI 79-579	11	11	Sea Robin Pipeline Company	OCS-G 2300 Lease, South Marsh Island Block 235, Offshore, Louisiana.
CI 80-479	12	12	Tennessee Gas Pipeline Company	Block 351, East Cameron Area, Offshore, Louisiana.

¹ Sabine Production Company, by letter dated October 24, 1983 notified the Commission that the gas subject to these rate schedules had been removed from the Natural Gas Act jurisdiction of the Commission pursuant to the operation of Section 601(a)(1)(b) of the Natural Gas Policy Act.

[FR Doc. 84-9942 Filed 4-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4309-000, et al.]

Tenneco Oil Co., Successor in Interest to Tema Oil Co.; Application for Permanent Certificate as Successor-in-Interest

April 9, 1984.

Take notice that on February 7, 1984, Tenneco Oil Company (Tenneco), of P.O. Box 2511, Houston, Texas 77001, filed an application for Permanent Certificate of Public Convenience and Necessity as successor-in-interest to Tema Oil Company (Tema), a general partnership between Tenneco Oil Company and Mesa Petroleum Company, to continue service from Tenneco's fifty percent interest in all properties owned by Tema, including, but not limited to, certain gas sales contracts as covered under the FERC certificates and rate schedules shown in the attached Appendix. The sale of assets and assignment of gas contracts by Tema to Tenneco is effective as of January 1, 1984, at which time the Tema partnership was dissolved.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 23, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to

intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

APPENDIX

Tenneco Oil Co. (operator), et al., agent for Tema Oil Co., FERC gas rate schedule No.	Certificate Docket No.	Purchaser/FERC Code No.	Proposed Tenneco Oil Co. FERC gas rate schedule No.
355	CI79-436	Lone Star Gas Company/011157	355
356	CI79-436	Lone Star Gas Company/011157	356
357	G-18117	Michigan-Wisconsin Pipe Line Co./012442	357
358	CI79-436	Lone Star Gas Company/011157	358
359	CI62-191	Natural Gas Pipeline Co. of America/013302	359
360	CI60-738	Panhandle Eastern Pipeline Co./014423	360
361	CI63-401	Michigan-Wisconsin Pipe Line Co./012442	361
362	CI63-489	Michigan-Wisconsin Pipe Line Co./012442	362
363	G-4309	Panhandle Eastern Pipeline Co./014423	363
364	G-8447	Colorado Interstate Gas Co./003979	364
365	CI79-436	Cities Service Gas Co./003575	365
366	CI79-436	Phillips Petroleum Co./014979	366
367	CI79-436	Phillips Petroleum Co./014979	367
368	G-4328	Panhandle Eastern Pipeline Co./014423	368
369	G-7230	Northern Natural Gas Co./013767	369
370	G-8446	Colorado Interstate Gas Co./003979	370
371	G-9947	Natural Gas Pipeline Co. of America/013302	371
372	G-10478	Panhandle Eastern Pipeline Co./014423	372
373	G-10546	Colorado Interstate Gas Co./003979	373
374	G-10606	Natural Gas Pipeline Co. of America/013302	374
375	G-12788	Kansas-Nebraska Natural Gas Co./010022	375
376	G-12802	Northern Natural Gas Co./013767	376
377	G-13929	Colorado Interstate Gas Co./003979	377
378	G-18916	Michigan-Wisconsin Pipe Line Co./012442	378
379	CI60-350	El Paso Natural Gas Co./005708	379
380	CI61-16	Panhandle Eastern Pipeline Co./014423	380
381	CI61-1361	Panhandle Eastern Pipeline Co./014423	381
382	CI64-159	Panhandle Eastern Pipeline Co./014423	382
383	CI64-423	Transwestern Pipeline Co./019120	383
384	CI64-446	Arkansas Louisiana Gas Co./000810	384
385	CI64-644	Natural Gas Pipeline Co. of America/013302	385
386	CI64-681	Northern Natural Gas Co./013767	386
387	CI64-686	Arkansas Louisiana Gas Co./000810	387
388	CI64-1381	Arkansas Louisiana Gas Co./000810	388
389	CI64-1422	Oklahoma Natural Gas Co./014070	389
390	CI64-1440	Horizon Oil & Gas/008850	390
391	CI65-123	Kansas-Nebraska Natural Gas Co./010022	391
392	CI65-441	Natural Gas Pipeline Co. of America/013302	392
393	CI65-545	Northern Natural Gas Co./013767	393
394	CI65-828	Panhandle Eastern Pipeline Co./014423	394
395	CI66-639	Cities Service Gas Co./003575	395
396	CI67-341	Panhandle Eastern Pipeline Co./014423	396
397	CI67-751	Northern Natural Gas Co./013767	397
398	CI67-1098	Michigan-Wisconsin Pipe Line Co./012442	398
399	CI68-966	Colorado Interstate Gas Co./003979	399
400	CI69-864	Michigan-Wisconsin Pipe Line Co./012442	400
401	CI70-736	Arkansas Louisiana Gas Co./000810	401
402	CI70-1018	Oklahoma Natural Gas Co./014070	402
403	CI67-717	Northern Natural Gas Co./013767	403
404			404

APPENDIX—Continued

Tenneco Oil Co. (operator), et al., agent for Terna Oil Co., FERC gas rate schedule No.	Certificate Docket No.	Purchaser/FERC Code No.	Proposed Tenneco Oil Co. FERC gas rate schedule No.
405	C173-276	Michigan-Wisconsin Pipe Line Co./012442	405
406	C173-324	El Paso Natural Gas Co./005708	406
407	C174-613	Michigan-Wisconsin Pipe Line Co./012442	407
408	C175-590	Michigan-Wisconsin Pipe Line Co./012442	408
409	C176-565	Panhandle Eastern Pipeline Co./014423	409
410	C176-645	Colorado Interstate Gas Co./003979	410
411	C176-739	Michigan-Wisconsin Pipe Line Co./012442	411
412	C178-139	Michigan-Wisconsin Pipe Line Co./012442	412
413	C178-209	Northern Natural Gas Co./013767	413
414	C178-691	Michigan-Wisconsin Pipe Line Co./012442	414
415	C178-614	Panhandle Eastern Pipeline Co./014423	415
434	C167-1631	Natural Gas Pipeline Co. of America/013302	434

APPENDIX

Mesa Petroleum Co. (operator), et al., agent for Terna Oil Co., FERC gas rate schedule No.	Certificate Docket No.	Purchaser/FERC Code No.	Proposed Tenneco Oil Co. FERC gas rate schedule No.
113	C184-249-000	Northern Natural Gas Co./013767	
114	C184-250-000	Northern Natural Gas Co./013767	
115	C184-251-000	Northern Natural Gas Co./013767	
116	C184-252-000	Northern Natural Gas Co./013767	
117	C184-253-000	Panhandle Eastern Pipeline Co./014423	
118	C184-254-000	Cities Service Gas Co./003575	
119	C184-255-000	Mobil Oil Corporation/012736	
120	C184-256-000	Northern Natural Gas Co./013767	
121	C184-257-000	Panhandle Eastern Pipeline Co./014423	
122	C184-258-000	Colorado Interstate Gas Co./003979	
123	C184-259-000	Panhandle Eastern Pipeline Co./014423	
124	C184-260-000	Panhandle Eastern Pipeline Co./014423	
125	C184-261-000	Colorado Interstate Gas Co./003979	
126	C184-262-000	Northern Natural Gas Co./013767	
127	C184-263-000	Panhandle Eastern Pipeline Co./014423	
128	C184-264-000	Colorado Interstate Gas Co./003979	
129	C184-265-000	Panhandle Eastern Pipeline Co./014423	
130	C184-266-000	Colorado Interstate Gas Co./003979	
131	C184-267-000	Colorado Interstate Gas Co./003979	
132	C184-268-000	Cities Service Gas Co./003575	
133	C184-269-000	Colorado Interstate Gas Co./003979	
134	C184-270-000	Colorado Interstate Gas Co./003979	
135	C184-271-000	Colorado Interstate Gas Co./003979	

[FR Doc. 84-8943 Filed 4-12-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51514; TSH-FRL 2565-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of

May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-nine PMNs and provides a summary of each.

DATES: Close of Review Period.

PMN 84-542, 84-543, 84-544, 84-545 and 84-546, June 27, 1984.

PMN 84-547, 84-548, 84-549, 84-550, 84-551, 84-552, 84-553, 84-554, June 30, 1984.

PMN 84-555, 84-556, 84-557, 84-558, 84-559, 84-560 and 84-561, July 1, 1984.

PMN 84-562, 84-563, 84-564, 84-565, 84-566, 84-567, 84-568, 84-569 and 84-570, July 2, 1984.

Written comments by:

PMN 84-542, 84-543, 84-544, 84-545 and 84-546, May 8, 1984.

PMN 84-547, 84-548, 84-549, 84-550, 84-551, 84-552, 84-553 and 84-554, May 31, 1984.

PMN 84-555, 84-556, 84-557, 84-558, 84-559, 84-562, 84-563, 84-564, 84-565, 84-566, 84-567, 84-568, 84-569 and 84-570, June 2, 1984.

PMN 84-562, 84-563, 84-564, 84-565, 84-566, 84-567, 84-568, 84-569 and 84-570, June 2, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51514]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460 (202-328-3532).

FOR FURTHER INFORMATION CONTACT:

Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-542

Importer. American Hoechst Corporation.

Chemical. (S) Benzenesulfonic acid, 2,4,6-trimethyl sodium salt.

Use/Import. (S) Intermediate for diazo photoresist. Import range: 50-300 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing and use: dermal, a total of 1 worker, up to 1/2 hr/da, up to 10 da/yr.

Environmental Release/Disposal. No release.

PMN 84-543

Importer. Confidential.

Chemical. (S) Glycine N-[4-[2-[4-[1-amino-8 hydroxy-7-phenylazo-3,6-disulfonaphth-2-yl]azo]phenyl]-1,3-benzodiazole-6-yl]azo-3 hydroxyphenyl] a trisodium salt.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Import: dermal, a total of 12 manhours/yr.

Environmental Release/Disposal. No data submitted.

PMN 84-544

Manufacturer. Confidential.

Chemical. (G) Polymer of substituted benzenes and tetrasubstituted propane.

Use/Production. (G) Non-dispersive use in commercial products. Prod. range: 400-600kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, a total of 22 workers, up to 2 hrs/da, up to 75 da/yr.

Environmental Release/Disposal. Release to air. 1-15kg/batch of disposal incinerated.

PMN 84-545

Manufacturer. Confidential.

Chemical. (G) Mixed acrylic ester copolymer with monobasic acid modified alkyd resin.

Use/Production. (G) Binder for industrial baking finishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-546

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Oil field chemical. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-547

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Hydroxy functional styrene-acrylic tetrapolymer.

Use/Production. (S) Industrial paint and coating vehicle. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

PMN 84-548

Manufacturer. Confidential.

Chemical. (G) Carbodiimide.

Use/Production. (G) Cross linking agent. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 12 hrs/da, up to 30 da/yr.

Environmental Release/Disposal. 0.2 kg/batch release to air. Disposal by incineration.

PMN 84-549

Manufacturer. Confidential.

Chemical. (G) Blocked diisocyanate polymer.

Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 5 hrs/da, up to 6 day/yr.

Environmental Release/Disposal. No release.

PMN 84-550

Manufacturer. Confidential.

Chemical. (G) Soybean-tung polyurethane varnish.

Use/Production. (G) Polymeric binder for air-dry clear and pigmented finishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-551

Manufacturer. Confidential.

Chemical. (G) Polymer polyamine.

Use/Production. (S) Industrial and commercial crosslinking agent for epoxy-type coatings. Prod. range: 76,000-910,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 12 workers, up to 8 hrs/da, up to 24 da/yr.

Environmental Release/Disposal: Less than 10 kg/yr released to land. Less than 100 kg/yr disposed of according to Resource Conservation Recovery act (RCRA).

PMN 84-552

Manufacturer. Confidential.

Chemical. (G) Polymeric polyamine.

Use/Production: (S) Industrial and commercial crosslinking agent for epoxy type coatings. Prod. range: 76,000-910,000 kg/yr.

Toxicity Data: No data submitted.

Exposure: Manufacture: dermal, a total of 12 workers, up to 8 hrs/da, up to 24 da/yr.

Environmental Release/Disposal: Less than 10 kg/yr released to land. Less than 100 kg/yr disposed of according to RCRA.

PMN 84-553

Manufacturer: Minnesota Mining and Manufacturing Company.

Chemical: (S) Polymer of: ethenyl benzene, isooctyl 2-propenoate, peroxide (3,3,5-trimethylcyclohexylidene)bis (1,1-dimethylethyl).

Use/Production: (G) Coating material for commercial article. Prod. range: Confidential.

Toxicity Data: No data on the PMN substance submitted.

Exposure: Manufacture and processing: dermal.

Environmental Release/Disposal: Release to land. Disposal by incineration and landfill.

PMN 84-554

Manufacturer: Confidential.

Chemical: (G) Copper phthalocyanine derivative.

Use/Production: (G) Coatings additive. Prod. range: Confidential.

Toxicity Data: No data on the PMN substance submitted.

Exposure: Confidential.

Environmental Release/Disposal: Confidential.

PMN 84-555

Manufacturer: Confidential.

Chemical: (G) Alkylarylphosphonium halide.

Use/Production: (G) Catalyst for polymer production. Prod. range: Confidential.

Toxicity Data: Acute oral: 230 mg/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

Exposure: Confidential. Disposal by POTW.

PMN 84-556

Manufacturer: Confidential.

Chemical: (G) Polyurethane polymer.

Use/Production: (G) Adhesive intermediate. Prod. range: Confidential.

Toxicity Data: No data submitted.

Exposure: Confidential.

Environmental Release/Disposal: No release.

PMN 84-557

Manufacturer: Confidential.

Chemical: (G) Substituted alkan diol.

Use/Production: (G) An intermediate used in industry applied coatings. Prod. range: 2,000-21,000 kg/yr.

Toxicity Data: No data submitted.

Exposure: Manufacture and processing: dermal, a total of 14 workers, up to 3 hrs/da, up to 40 da/yr.

Environmental Release/Disposal: 1-10 kg/batch released to land. Disposal by incineration and landfill.

PMN 84-558

Manufacturer: Confidential.

Chemical: (G) Darbocylated alkane diol.

Use/Production: (G) Major component of a coating applied by industrial shops in an open use. Prod. range: 3,500-35,000 kg/yr.

Toxicity Data: No data submitted.

Exposure: Manufacture and processing: dermal, a total of 17 workers, up to 6 hrs/da, up to 50 da/yr.

Environmental Release/Disposal: 5 to 15 kg/batch released to land. Disposal by incineration and landfill.

PMN 84-559

Manufacturer: Confidential.

Chemical: (G) Acrylate copolymer.

Use/Production: (G) Dispersive water treatment. Prod. range: Confidential.

Toxicity Data. LC₅₀ 96 hr (Bluegill): 4,100 mg/l; EC₅₀ 96 hr (Freshwater alga): 149 parts per million (ppm).

Exposure. Confidential. *Environmental Release/Disposal.* Confidential.

PMN 84-560

Manufacturer: Confidential.

Chemical: (G) Acrylate copolymer.

Use/Production: (G) Dispersive water treatment. Prod. range: Confidential.

Toxicity Data. LC₅₀ 96 hr (Bluegill): 3,600 mg/l; EC₅₀ 96 hr (Freshwater alga): 271-449 ppm.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-561

Manufacturer: Dresser Industries, Inc.

Chemical: (G) Low molecular weight modified polyacrylate.

Use/Production: (G) Oil well drilling fluid additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 20 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 0-100 lbs/yr released to water. Disposal by company owned waste treatment plant.

PMN 84-562

Manufacturer: Confidential.

Chemical: (S) Polymer of: bromine, polystyrene.

Use/Production: (S) Industrial flame retardant additive for compounding into thermoplastics or other polymeric systems. Prod. range: Confidential.

Toxicity Data. Acute oral: >1,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Less than 1 kg/batch released. Disposal by incineration, landfill and navigable waterway after discharge from waste treatment facility.

PMN 84-563

Manufacturer: The Dow Chemical Company.

Chemical: (S) 1,3-phenylene bis (phenyl methanone).

Use/Production: (S) Site-limited chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >1,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Moderate.

Exposure. Manufacture and use: dermal, a total of 2 workers, <2 hrs/da, up to 1 da/yr.

Environmental Release/Disposal. Less than 5 g/batch released to water. Disposal by POTW and commercial waste treatment company.

PMN 84-564

Manufacturer: The Dow Chemical Company.

Chemical: (S) 1,3-di(1-phenyl-1-hydroxyethyl) benzene.

Use/Production: (S) Site-limited chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 1 worker, <1 hr/da, up to 1 da/yr.

Environmental Release/Disposal. Less than 5 g/batch released to water. Disposal by POTW.

PMN 84-565

Manufacturer: Confidential.

Chemical: (S) Polymer of: alpha methyl styrene, 2-ethyl hexyl acrylate, hydroxy ethyl acrylate, cumene hydroperoxide, epsilon carrolactone, stannous.

Use/Production: (S) Industrial coatings. Prod. range: 50,000-150,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 7 workers, up to 1 hr/da, up to 251 da/yr.

Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by approved landfill.

PMN 84-566

Manufacturer: Confidential.

Chemical: (S) Polymer of N-(isobutoxymethyl)acrylamide, methyl methacrylate, 2-ethylhexyl acrylate, acrylic acid, t-butyl peroctoate.

Use/Production: (S) Industrial coatings. Prod. range: 25,000-40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 7 workers, up to 1 hr/da, up to 251 da/yr.

Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by landfill.

PMN 84-567

Importer: Confidential.

Chemical: (G) 2-propenenitrile, polymer with disubstituted 1,3-butadiene.

Use/Import: (S) Industrial manufacture of specialty rubber articles. Import range: Confidential.

Toxicity Data. Irritation: Skin—No irritation, Eye—Non-irritant.

Exposure. No data submitted. *Environmental Release/Disposal.* Disposal by incineration.

PMN 84-568

Manufacturer: Arizona Chemical Company.

Chemical: (G) Substituted tall oil polymer.

Use/Production: (G) Coating resin. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: a total of 10 workers, up to 1 hr/da, up to 80 da/yr. *Environmental Release/Disposal.* Less than 1 kg/batch released. Disposal by POTW and incineration.

PMN 84-569

Manufacturer: Confidential.

Chemical: (G) Polychlorinated alkylated aromatic hydrocarbon.

Use/Production: (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 2,072 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Mild, Eye—Moderate; Inhalation: LC₅₀ 4 hr: <4.65 mg/l.

Exposure. Manufacture: dermal and inhalation, a total of 9 workers, up to 2 hrs/da, up to 23 da/yr.

Environmental Release/Disposal. <0.01 kg/batch released to air.

PMN 84-570

Manufacturer: Confidential.

Chemical: (G) Alkyl substituted 4-amino, 1-8 naphthalimide.

Use/Production: (S) Tracer dye. Prod. range: 6,000-10,000 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 3-4 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. Less than 0.1 kg released to water. Disposal by POTW.

Dated: April 10, 1984.

Linda A. Travers,
Acting Director, Information Management Division.

[FR Doc. 84-9956 Filed 4-12-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59148A/149A; BH-FRL 2565]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances

Control Act (TSCA), TME-84-35 and TME-84-36. The test marketing conditions are described below.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT:

Joe B. Boyd/Anna Coutlakis, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M St. SW., Washington, DC 20460, (202-382-3739).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-35 and TME-84-36. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, number of workers exposed to the new chemicals, and the levels and durations of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

TME 84-35

Date of Receipt: February 22, 1984.

Notice of Receipt: March 9, 1984 (49 FR 9013).

Applicant: Confidential.

Chemical: (G) Modified, maleated metal resinate.

Use: Publication gravure printing inks.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Manufacture: dermal, a total of 8 workers, up to 2 days/yr.

Processing: Dermal, as many as 5 workers, up to 10 days/yr.

Test Marketing Period: 1 year.

Commencing on: April 6, 1984.

Risk Assessment: No significant health or environmental concerns were

identified. The estimate worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.

Public Comments: None.

TME 84-36

Date of Receipt: February 24, 1984.

Notice of Receipt: March 9, 1984 (49 FR 9013).

Applicant: Grau Aromatics GmbH & Co. KG.

Chemical: (G) Monocyclic acetate.

Use: Perfume for soaps and detergents.

Import Volume: 50g.

Number of Customers: 4.

Worker Exposure: From processing, up to 2 workers; from use, up to 120 persons.

Test Marketing Period: 3 months.

Commencing on: April 6, 1984.

Risk Assessment: The Agency has identified potential adverse health effects associated with chronic exposure to substances analogous to the TME substance. The Agency finds, however, that the TME activity, as proposed in the application, does not pose an unreasonable risk to health during processing and use operations as the potential exposure will be very limited.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: April 6, 1984.

Don R. Clay,

Director, Office of Toxic Substance.

[FR Doc. 84-9957 Filed 4-12-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59153; TSH-FRL 2565-5]

Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing

exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption provides, a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: April 30, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-59153]" and the specific TME number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

TME 84-44

Close of Review Period: May 13, 1984.

Manufacturer: American Hoechst Corporation.

Chemical: (S) Polymer of: naphtha, (petroleum) light steam cracked, linseed oil, soya oil, phthalic anhydride, isophthalic acid, glycerine, castor oil, maleic anhydride, fumaric acid, oxalic acid, pentaerythritol.

Use/Production: (G) Open, non-dispersive. Prod. range: 3,500 kg, 6 months or less.

Toxicity Data: No data on the TME substance submitted.

Exposure: Processing: dermal, a total of 4 workers, up to 8-10 manhours.

Environmental Release/Disposal: Disposal will occur as a minor component.

Dated: April 9, 1984.

Joselle Gatrell,

Acting Director, Information Management Division.

[FR Doc. 84-9962 Filed 4-12-84; 8:45 am]

BILLING CODE 6560-50-M

[FRL 2565-8]

Science Advisory Board; Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of a Subcommittee of the Environmental Engineering Committee (EEC) of the Science Advisory Board will be held in the James Room, Stouffer's National Center Hotel, 2399 Jefferson Davis Highway, Arlington (Crystal City), Virginia, on May 4, 1984. The meeting will begin at 10:00 a.m. and last until approximately 5:00 p.m.

The agenda for the meeting will consist of a review of a proposed leaching procedure (EP III) for determining the leaching potential of organic constituents from solid and hazardous wastes.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Staff Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comment will be accepted in any form and there will be opportunity for brief oral statements. Anyone wishing to make such comment must contact Mr. Torno prior to April 30, 1984, in order to be placed on the agenda.

Dated: April 9, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-9955 Filed 4-12-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2564-5]

Availability of Environmental Impact Statements Filed April 2 Through April 6, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840140, Draft, FHW, PA, Exton Bypass Linkage, Coatesville Downingtown Bypass to US 202, Chester County, Due: May 31, 1984.

EIS No. 840141, Draft, AFS, AL, Sipsey Fork, West Fork Wild/Scenic River Study, Designation, Bankhead NF,

Lawrence and Winston Cos., Due: Jul. 3, 1984.

EIS No. 840142, Draft, AFS, MS, Black Creek Wild/Scenic River Study, Designation, De Soto Nat'l Forest, Due: Jul. 3, 1984.

EIS No. 840143, Final, BLM, CA, Hollister Planning Area, Multiple-Use Resource Management Plan, Due: May 14, 1984.

EIS No. 840144, Draft, NHT, REG, Model Years 1986-1987 Light Trucks Corporate Average Fuel Economy, Standards, Due: May 29, 1984.

EIS No. 840145, DSUPPL, IBR, CA, Santa Margarita Multiple Purpose Water Resource Project, San Diego County, Due: Jun. 4, 1984.

EIS No. 840146, Draft, EOE, South Carolina Oil Refinery/Underwater Pipeline Installation, Permit, Sampit River, Georgetown Co, Due: May 29, 1984.

EIS No. 840147, Draft, NOA, PRO, Next Generation Weather Radar (NEXRAD) System, Construction/Operation, Due: May 29, 1984.

EIS No. 840148, Draft, FHW, PA, Bayfrontport Access Rd. Const., I-79/W. 12th St. to E. 6th St./E. Lake Rd., Erie County, Due: May 29, 1984.

EIS No. 840149, Draft, CDB, CA, Hotel Two/Parking Garage Development, UDAG, Alameda County, Due: May 29, 1984.

EIS No. 840150, Final, HUD, CA, Terra Vista Planned Community, Mortgage Insurance, San Bernardino County, Due: May 14, 1984.

EIS No. 840151, Final, COE, WA, Spirit Lake, Permanent Outlet Alternative Strategies, Skamania County, Due: May 14, 1984.

EIS No. 840152, Final, COE, ND, Sheyenne River Basin Flood Control Plan, Cass, Richland, Ramson and Barrer Cos., Due: May 14, 1984.

EIS No. 840129, Draft, OSM, WY, East Gillette Federal Mine Operation, Approval/Permit, Campbell County, Due: May 29, 1984. Published FR Mar. 30, 1984—Review extended.

EIS No. 800679, Draft, FWS, MT, Charles M. Russell National Wildlife Refuge Management Plan, Published FR Sept. 19, 1980—Officially withdrawn.

Dated April 9, 1984.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 84-10007 Filed 4-12-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Chemical Financial Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 4, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chemical Financial Corporation*, Midland, Michigan; to acquire 100 percent of the voting shares of Northern National Bank Garyling, Michigan.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Kentucky Southern Bancorp, Inc.*, Bowling Green, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Bowling Green, Bowling Green, Kentucky.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Wabasha Holding Company*, Wabasha, Minnesota; to become a bank holding company by acquiring 91.83 percent of the voting shares of First State Bank of Wabasha, Wabasha, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President)

925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Overland Park Bancshares, Inc.*, Overland Park, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Overland Park, Overland Park, Kansas (in organization).

Board of Governors of the Federal Reserve System, April 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9933 Filed 4-12-84; 8:45 am]

BILLING CODE 6210-01-M

DCB Investment, Inc.; Proposed Acquisition of Souba Insurance Agency

DCB Investment, Inc., David City, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Souba Insurance Agency, David City, Nebraska.

Applicant states that the proposed subsidiary would engage in the activities of selling general insurance in a community of less than 5,000.

These activities would be performed from offices of Applicant's subsidiary in David City, Nebraska, and the geographic area to be served is David City, Nebraska, and the surrounding area.

Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedure of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or

at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to be received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 9, 1984.

Board of Governors of the Federal Reserve System, April 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9934 Filed 4-12-84; 8:45 am]

BILLING CODE 6210-01-M

Fleet Financial Group, Inc.; Correction

This notice corrects a previous Federal Register document (FR 84-8221), published at page 11713 of the issue for Tuesday, March 27, 1984. Item A.1 is corrected to read:

Fleet Financial Group, Inc., Providence, Rhode Island, proposes to engage *de novo* through its subsidiary, Fleet Mortgage Corporation, Milwaukee, Wisconsin, in making, acquiring, selling or servicing of mortgage loans or other extensions of credit; in consumer finance; and in acting as insurance agent or broker with respect to credit life and credit accident and health insurance that is directly related to a mortgage loan or consumer loan made or acquired by such subsidiary. Comments on this application must be received by the Federal Reserve Bank of Boston not later than April 23, 1984.

Board of Governors of the Federal Reserve System, April 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9936 Filed 4-12-84; 8:45 am]

BILLING CODE 6210-01-M

Marine Midland Realty Credit Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Marine Midland National Corporation*, Buffalo, New York; to engage *de novo* through its subsidiary, Marine Midland Realty Credit Corporation, in originating, making, acquiring, and servicing, for its own account or for the account of others, loans and other extensions of credit, either unsecured or principally secured by mortgages on residential or commercial properties or leasehold interests therein; acting as investment or financial adviser to the extent of serving as the advisory company for a mortgage or real estate investment trust, furnishing general economic information and advice on real estate matters, and providing portfolio investment advice on real estate matters; and arranging commercial real estate equity financing.

Board of Governors of the Federal Reserve System, April 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9937 Filed 4-12-84; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities.

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of

the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1343(c)(8)) and §225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the questions whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decrease or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank or the offices of the Board of Governors not later than April 27, 1984.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*; Los Angeles, California; to acquire substantially all of the data processing assets and assume certain liabilities of: Baldwin-United Corporation, New York, New York; and D.H. Baldwin Company, Cincinnati, Ohio, a wholly-owned subsidiary of Baldwin United Corporation, and thereby engage in data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, and operating personnel), data bases or access to such services, facilities, or data bases by any technological means.

Board of Governors of the Federal Reserve System, April 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9935 Filed 4-12-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 6.

Public Health Service

Food and Drug Administration

Subject: Performance Standards Development (0910-0072)—Extension/No Change

Respondents: Voluntary standards development organizations

Subject: Labeling Requirements for Medical Devices and Radiological Products—Existing Collection

Respondents: Businesses

OMB Desk Officer: Bruce Artim

National Institutes of Health

Subject: Final Invention Statement and Certification (For Grant or Award) (0925-0159)—Extension/No Change

Respondents: Businesses

OMB Desk Officer: Fay S. Iudicello

Centers for Disease Control

Subject: Statement in Support of Application for Waiver of Excludability Under Sections 212(A) (1) and (3) of Immigration and Nationality Act (0920-0006)—Extension/No Change

Respondents: Individuals and medical facilities

OMB Desk Officer: Fay S. Iudicello

Health Resources and Services Administration

Subject: Application to Participate in the Health Professions Capitation Program—Reinstatement

Respondents: Health professions schools

Subject: Health Profession Student Loan (HPSL) Program Promissory Note (0915-0074)—Extension/No Change

Respondents: Individuals

OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Evaluation of the Medicare Competition Demonstration Survey Questionnaires (0938-0289)—Revision

Respondents: Medicare beneficiaries enrolled in alternative health plans

Subject: Evaluation of Section 2176

Home and Community Based Care

Medicaid Waiver Program—New

Respondents: State Medicaid agencies

OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

Subject: Health Care Program Violations Notifications Form—New

Respondents: State or local governments, businesses

OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. ATTN: (name of OMB Desk Officer).

Dated: April 9, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-9928 Filed 4-12-84; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84N-0102]

Availability of List of Orphan Product Designations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a list identifying the drugs and biological products granted orphan designation in accordance with section 526 of the Orphan Drug Act (Pub. L. 97-414).

ADDRESS: A copy of this list is available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Roger C. Gregorio, Office of Orphan

Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan designation pursuant to the interim guidelines for section 526 of the Orphan Drug Act. In accordance with section 526 of that act, which requires public notification of designations, a list identifying designated drugs and biological products will be maintained on a continuous basis in FDA's Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document. The list on display at the Dockets Management Branch specifies the name of the respective sponsor, the name (trade and generic) of the designated drug or biological product, and the use for which the drug or biological product has been designated. The list on display will be updated on a quarterly basis. Copies of the designation listing may be obtained from the Dockets Management Branch upon request. The designation of a drug or biological product is not universal in that each sponsor is obligated to make application for designation for its respective product. Copies of the interim guidelines for use in compiling an application for designation may be obtained from the Office of Orphan Products Development (HF-35) (address above).

Dated: April 6, 1984.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9906 Filed 4-12-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84M-.0090]

Radiometer America, Inc.; Premarket Approval of TCM20 (Formerly TCM10) Carbon Dioxide Monitoring System.

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application for premarket approval under the Medical Device Amendments of 1976 of the TCM20 Carbon Dioxide Monitoring System for adult use, sponsored by Radiometer America, Inc., Westlake, OH. After reviewing the recommendation of the Anesthesiology Device Section of the Respiratory and

Nervous System Devices Panel with respect to the original application for the device, FDA notified the sponsor that the supplemental application was approved because the device had been shown to be safe and effective for use in adults as recommended in the submitted labeling.

DATE: Petitions for administrative review by May 14, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (formerly the National Center for Devices and Radiological Health) (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On August 7, 1981, FDA approved an application for premarket approval of the TCM10 TC Carbon Dioxide Monitoring System (now called the TCM20) for use on neonates and infants. The application was submitted by Radiometer America, Inc., Westlake, OH 44145. In the *Federal Register* of September 4, 1981 (46 FR 44507), FDA announced that the application had been approved and also that the use of the device on adults remained investigational. On May 10, 1982, Radiometer America, Inc., submitted to FDA a supplemental application for premarket approval of the TCM20 Carbon Dioxide Monitoring System for use on adults. After reviewing the recommendation of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel, an FDA advisory committee, with respect to the original application, FDA, on March 1, 1984, approved the supplemental application by a letter to the sponsor from the Acting Director, Office of Device Evaluation, Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petition shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 14, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 9, 1984.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9905 Filed 4-12-84; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Fiscal Year 1984 Funding Preference for Area Health Education Center Programs

The Bureau of Health Professions (the Bureau), Health Resources and Services Administration, Division of Medicine, announces the final funding preference which will govern the distribution of Fiscal Year 1984 grant awards for Cooperative Agreements for Area

Health Education Center Programs under Section 781(a)(1) of the PHS Act.

The purpose of cooperative agreements for AHEC programs is to assist medical and osteopathic schools which have cooperative arrangements with one or more nonprofit private or public area health education centers for the planning, development and operation of area health education center programs. The Bureau will give preference to new applications submitted under this authority.

This funding preference was published for public comment in the *Federal Register* of January 10, 1984 (49 FR 1290) and one comment was received during the 30-day comment period.

The respondent recommended that the funding preference be modified to reflect the unique health care needs across the Pacific Basin region. The Bureau has not adopted this comment because it believes that the preference, as proposed, sufficiently addresses this concern. As a new applicant, the respondent would be eligible for the funding preference. The Bureau has informed the respondent of technical assistance available for prospective applicants and believes that the respondent will be able to effectively compete in the AHEC grant review.

Therefore, in making Fiscal Year 1984 grant awards for Cooperative Agreements for Area Health Education Center programs, the following funding preference is being used: (1) New planning and development projects under Section 781(a)(1) will be funded first, and (2) supplements to existing awards will be funded with any remaining funds, according to their relative priority scores.

Dated: April 8, 1984.

Robert Graham,
Administrator, Assistant Surgeon General.

[FR Doc. 84-9800 Filed 4-12-84; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W-88021]

Wyoming; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has received an application from the Department of Housing and Urban Development to withdraw 5.55 acres of non-public land

in which the United States may hereafter acquire interests. This withdrawal is for the purpose of protecting the equity of the Department of Housing and Urban Development in the development of public housing. The land is presently patented to the City of Buffalo, Wyoming, subject to a reversionary clause to the United States in conformance with provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended. The mineral estate of this land is owned by the State of Wyoming. The withdrawal will close the land to surface entry and transfer surface jurisdiction to the Department of Housing and Urban Development should reversion occur.

DATE: Comments and request for a public meeting should be received by July 12, 1984.

ADDRESS: Comments and meeting requests should be sent to: Wyoming State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, (307) 772-2089.

SUPPLEMENTARY INFORMATION: On March 12, 1984, an application for a withdrawal was received from the Department of Housing and Urban Development (HUD), of any interest of the Federal government, in the land described below, which may hereafter be acquired by operation of the reversionary clause in the patent to the City of Buffalo, Wyoming, pursuant to the Recreation and Public Purposes Act of June 14, 1926, 43 U.S.C. 869 et seq. (1976). This action will withdraw the land from settlement, sale, location, or entry under the general land laws and transfer surface jurisdiction to HUD to reserve it for the public housing development program.

The land is described as follows: A tract of land, being a portion of Parcel A, Township 50 and 51 North, Range 82 West, 6th P.M., Johnson County, Wyoming, being further described as follows:

Commencing at an existing brass cap which marks the center of Section 34, Township 51 North, Range 82 West, 6th P.M., in Johnson County, Wyoming; thence S. 00° 28' 00" E. a distance of 79.03 feet to an aluminum capped rebar stamped LS 2335, said aluminum capped rebar being the true point of beginning; thence N. 89° 58' 15" E., a distance of 331.71 feet to an aluminum capped rebar stamped LS 2335; thence S. 18° 59' 05" E. a distance of 181.79 feet to an aluminum capped rebar stamped LS 2335; thence S. 79° 29' 04" E. a distance of 122.52 feet to an aluminum capped rebar stamped LS 2335; thence S. 00° 28' 00" E. a distance of 328.52 feet to an existing iron pipe; thence S. 89° 01' 06" W. a distance of 209.65 feet to an

existing iron pipe; thence S. 89° 04' 17" W. a distance of 300.09 feet to an existing iron pipe; thence N. 00° 28' 00" W. a distance of 531.06 feet to the true point of beginning.

Said tract containing 5.55 acres, more or less.

The purpose of the withdrawal is to protect the equity of HUD in the development of public housing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the address stated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the *Federal Register* at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Dated: April 4, 1984.

James H. O'Connor,
Acting State Director, Wyoming.

[FR Doc. 84-9822 Filed 4-12-84; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1022, Block 218, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 5, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of

Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT:

Mr. Emile H. Simoneaux, Jr., Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 6, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-0821 Filed 4-12-84; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Intent to Hold Workshops and Public Hearings on Water Service Ratesetting Policy; Central Valley Project, California

The Department of the Interior, through the Bureau of Reclamation, has developed a water ratesetting options paper for the CVP. The paper was prepared pursuant to the Reclamation Projects Act of 1939 (53 Stat. 1187), Pub. L. 84-643 (Act of July 2, 1956, 70 Stat. 483), Pub. L. 88-44 (Act of June 21, 1963, 77 Stat. 68), and the Reclamation Reform Act of 1982, title II, Pub. L. 97-293 (96 Stat. 1263).

The CVP was originally authorized as an Army Corps of Engineers project by the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1028, 1038). Congressional reauthorization of the project under Reclamation law was provided in Section 2 of the Rivers and Harbors Act of August 26, 1937 (50 Stat. 844), and by the Rivers and Harbors Act of October 17, 1940 (54 Stat. 1198). Congress further reauthorized the project by the Act of October 14, 1949 (63 Stat. 852) and the Act of September 26, 1950 (64 Stat. 1036). Additional units

were authorized by the Congress as integral parts of the project by the Acts of August 12, 1955 (69 Stat. 719); June 3, 1960 (74 Stat. 156); October 23, 1962 (76 Stat. 1191 and 1192); September 2, 1965 (79 Stat. 615); August 19, 1967 (81 Stat. 187); August 27, 1967 (81 Stat. 173); October 23, 1970 (84 Stat. 1097); and September 28, 1976 (90 Stat. 1328).

The initial irrigation water service contracts for the CVP were written for a term of 40 years. Water rates were established for each service area and remained constant during the contract term. The initial CVP water rate structure for irrigation was a graduated scale ranging from a low of \$2 per acre-foot in the Sacramento Valley near the source of the supply, and increasing to \$3.50 per acre-foot for all service in the San Joaquin Valley south of the Sacramento-San Joaquin River Delta. The San Luis Unit in the San Joaquin Valley was authorized in 1960. The unit's feasibility report contained an irrigation water rate of \$7.50 per acre-foot and this rate was used in water service contracts for the unit. Municipal and industrial (M&I) water service contracts also were written with nonadjustable water rates for terms of 40 years. Some M&I contracts provide for rate changes to ensure meeting operation, maintenance, and replacement costs. Earlier CVP M&I rates ranged from \$9 per acre-foot for water from reservoirs and rivers, to \$85 per acre-foot from special facilities. Since the late 1960's, it has become evident that fixed-rate contracts do not ensure return of an appropriate share of the project costs to the Treasury.

The establishment of a projectwide ratesetting policy for the CVP is a complex undertaking. Previous efforts included a series of public hearings on the 1981 ratesetting proposal from which comments have been incorporated into a policy options paper. Passage of the Reclamation Reform Act has also changed the policy framework under which the Bureau of Reclamation must operate.

The proposed irrigation ratesetting policy options document has been developed to implement the ratesetting provisions of the Reclamation Reform Act, to ensure adequate returns to the Treasury, and to provide equitable charges among water users for services received. This proposed policy is formalized and is available for review by interested parties. The policy options document reviews some water rate history and discusses the need for a standard ratesetting policy. The calculations illustrating irrigation water rates are included for review. Those calculations reflect applications of the

proposed policy options to the rate calculations for the project.

The proposed policy options paper includes recommended policy as well as several feasible alternatives for consideration. Sample calculations which demonstrate the impacts of the proposals are provided to enhance understanding of the alternatives.

To facilitate an indepth understanding of this proposal, there will be a series of three informal workshop sessions at which the policy options and calculations will be explained in detail. There will be an opportunity to ask questions; however, the merits of the policy will not be subject to debate. The sessions are open to the general public and are to promote an exchange of ideas and to answer questions prior to the public hearings. All workshops will be conducted between 1:00 and 5:00 p.m. as follows:

Visalia—Monday, April 16, 1984, at the Holiday Inn, 9000 W. Airport Drive

Willows—Friday, April 20, 1984, at Memorial Hall, 525 W. Sycamore Street

Los Banos—Monday, April 23, 1984, at the Elks Lodge, 565 E Street

Three public hearings dates have been scheduled to receive comments on the draft policy options document from interested individuals and organizations. The locations, dates and times for the hearings are as follows:

Los Banos—Monday, May 14, 1984, 1 p.m., at the Elks Lodge, 565 E Street

Visalia—Tuesday, May 15, 1984, 1 p.m., at the Holiday Inn, 9000 W. Airport Drive

Willows—Thursday, May 17, 1984, 1 p.m., at Memorial Hall, 525 W. Sycamore Street

Requests to speak may be made at the hearings. Those individuals or organizations which desire to speak at a specified time should send a written request for such to the address listed below. Each hearing will continue until all persons desiring to comment have been heard.

The time permitted for oral presentations at the hearings should be limited to 10 minutes per speaker. Speakers will not be permitted to trade or consolidate their scheduled time to make longer individual presentations. However, the persons presiding at the hearing may allow additional oral comments by anyone after all scheduled speakers have been heard. Written statements by persons who desire to supplement their oral presentations may be submitted to the Regional Director at the address listed below. Any such written statements or other comments

on the ratesetting policy will be accepted through June 30, 1984.

Copies of the draft policy may be obtained without charge by writing to the Regional Director, Bureau of Reclamation, Water Rate Policy (MP-440), 2800 Cottage Way, Sacramento, CA 95825. Questions by telephone should be directed to Mr. Merv deHaas at (916) 484-4880.

Dated: April 11, 1984.

B. H. Spillers,

Acting Commissioner of Reclamation.

[FR Doc. 84-10142 Filed 4-12-84; 10:24 am]

BILLING CODE 4310-09-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

A.I.D. Research Advisory Committee Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on May 14-15, 1984 at the Pan American Health Organization Building, 525-23rd Street, N.W., Washington, D.C., Conference Room 'C'. The Committee will discuss recent developments in A.I.D. research policy.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m. each day. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Mr. Bernard Masters, Acting Director, Office of Technical Review and Information, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Mr. Masters, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235-8929.

Dated: March 30, 1984.

Bernard Masters,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 84-9916 Filed 4-12-84; 8:45 am]

BILLING CODE 6116-01-M

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection

requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than (ten days after publication). Comments may also be addressed to, and copies of the submissions obtained for the Reports Management Officer, Ms. Delita E. Yearwood, (202) 632-3378, IRM/MMP, Room 708B, SA-12, Washington, D.C. 20523.

Date submitted: April 5, 1984

Submitting agency: Agency for

International Development

OMB number: 0412-0004

Form number: AID 11

Type of submission: Extension

Title: Application for Approval of Commodity Eligibility

Purpose: AID provides loans and grants to many developing countries in the form of Commodity Import Programs. These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S. or other developing countries. This collection is completed by commercial suppliers and used to ensure AID-financed commodities are in accordance with statutory requirements by (1) determining commodities meet eligibility criteria for AID-financing and (2) assuring there is no apparent over pricing.

Reviewer: Francine Picoult, (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: April 5, 1984.

Fred D. Allen,

Acting Chief, Mandated Management Programs.

[FR Doc. 84-9915 Filed 4-12-84; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation: Commercial Metals Company, 7800 Stemmons Freeway (75247), Post Office Box 1046 (75221), Dallas, Texas. State of incorporation: Delaware

2. The following 100% wholly-owned or controlled subsidiaries will participate in the operation:

CMC Process Products, Inc., 7800 Stemmons Freeway, Dallas, Texas 75247, State of incorporation: Texas
CMC Oil Company, 7800 Stemmons Freeway, Dallas, Texas 75247, State of incorporation: Texas
CMC Steel, Inc., Mill Road, Seguin, Texas 78155, State of incorporation: Texas
Capitol City Steel Company, 6717 Circle S Road, Austin, Texas 78745, State of incorporation: Texas
Cometals, Inc., One Penn Plaza, Room 3401, New York, New York 10001, State of incorporation: New York
Commercial Metals-Austin, Inc., 710 Industrial, P.O. Box 19169, Austin, Texas 78760-9169, State of incorporation: Texas
Commercial Metals Railroad Salvage Company, 7800 Stemmons Freeway, Dallas, Texas 75247, State of incorporation: Texas
Commonwealth Metal Corporation, 560 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, State of incorporation: New Jersey
Enterprise Metal Corporation, 175 Great Neck Road, Room 408, Great Neck, New York 10021, State of incorporation: New York
Howell Metal Company, State Route 728, P.O. Box 218, New Market, Virginia 22844, State of incorporation: Virginia
SMI Steel Inc., P.O. Box 2875 A, Birmingham, Alabama 35212, State of incorporation: Alabama
Structural Metals, Inc., Mill Road, Seguin, Texas 78155, State of incorporation: Texas
Texas Cold Finished Steel, Inc., 1300 Baker, Houston, Texas 77002, State of incorporation: Texas
CMC Steel Fabricators, Inc., State of incorporation: Texas, Doing business under the following names:
Arkansas Steel Rolling Mills, Inc., Kerlin Road, Box 489, Magnolia, Arkansas 71753
Capitol Steel, Inc., 2655 North Foster Drive, P.O. Box 66636, Baton Rouge, Louisiana 70896
CoMet Steel, Inc., 4846 Singleton Boulevard, Dallas, Texas 75212
Houston Steel Service Company of Texas, Inc., 5321 Westpark Drive, Houston, Texas 77065
Houston Steel Service Company—Rebar Division, 5321 Westpark Drive, Houston, Texas 77065
Safety Railway Service Company, Aloe Field, P.O. Box 2298, Victoria, Texas 77901
Safety Steel Service, Inc., Rodd Field,

P.O. Box 6546, Corpus Christi, Texas 78411

Safety Steel Service, Inc., 201 East Crestwood Drive, Victoria, Texas 77901

Safety Steel Construction, Inc., 201 East Crestwood Drive, P.O. Box 2298, Victoria, Texas 77901

Southern States Steel Company, 9675 Walden Road, Beaumont, Texas 77706

Southern Farm Supply Company, 1318 Buschong Road, Houston, Texas 77093

Southern Fence Post Company, 1318 Buschong Road, Houston, Texas 77039

Southern Post Company, 1318 Buschong Road, Houston, Texas 77039

Southern Post Company, 1960 Benchmark Drive, Roundrock, Texas 78664

Southern Post Company, Kerlin Road, P.O. Box 489, Magnolia, Arkansas 71753

Sterling Steel Company, 5600 Braxton, Suite 12, Houston, Texas 77036

1. Parent corporation and address of principal office: Stevens Furniture Company, Inc., 1258 Hickory Blvd. SW., P.O. Box 270, Lenoir, NC 28645.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

(a) S & S Express, Inc., 1258 Hickory Blvd. SW., P.O. Box 270, Lenoir, NC 28645.

(b) State of Incorporation is North Carolina.

James H. Bayne,
Acting Secretary.

[FR Doc. 84-0949 Filed 4-12-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB 55 (Sub-106)]

Rail Carriers; Seaboard System Railroad, Inc.—Abandonment—in Talladega County, AL; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 5.5 mile rail line near Fayetteville, AL (milepost LE 448.0) and Gantt's Junction (milepost 453.5) in Talladega County, AL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the

applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,
Acting Secretary.

[FR Doc. 84-0990 Filed 4-12-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28640 (Sub-9)]

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.; Reorganization, Acquisition by Grand Trunk Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Modification of Procedural Schedule.

SUMMARY: The Commission modifies the procedural schedule previously issued (49 FR 12333, March 26, 1984) for consideration of proposals under section 5(b) of the Milwaukee Railroad Restructuring Act, 45 U.S.C. 904(b), by Soo Line Railroad Company (Soo), Chicago and North Western Transportation Company (CNW), Grand Trunk Corporation (GTC), and Chicago Milwaukee Corporation (CMC) to acquire the core assets of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

DATE: Comment by persons in support or opposition to any of the proposals, and verified statements by non-applicant parties in support of acquisition proposals are due April 13, 1984. The complete procedural schedule, as modified, is contained in the Commission's decision.

ADDRESSES: An original and 20 copies of all pleadings referring to Finance Docket No. 28640 (Sub-No. 9) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Copies should be served on all parties of record in Finance Docket No. 28640 (Sub-No. 9). A list of parties of record is available from the Secretary's office at (202) 275-7999.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245; or Joseph C. Levin, (202) 275-7936Q02

SUPPLEMENTARY INFORMATION: The complete procedural schedule for consideration of acquisition applications of Soo, CNW, GTC, and CMC, as

modified, and additional information are contained in the Commission's decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289-4357 (DC Metropolitan area) or call toll free (800) 424-5403.

Decided: April 4, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,
Acting Secretary.

[FR Doc. 84-10111 Filed 4-12-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

April 10, 1984.

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(H) of Pub. L. 96-511 applies; (10) The name and telephone number of the person or office responsible for OMB review. Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer Larry E.
Miesse—202-633-4312

New Collection

- Bureau of Justice Statistics,
Department of Justice
1984 Census of State Adult Correctional
Facilities
General purpose statistics
State or local governments

Census data are collected from state operated correctional facilities and are used by Federal and State officials, correctional administrators, researchers, and other to evaluate the current conditions and needs of correctional facilities. The last such census was conducted in 1979: 850 respondents, 850 hours; not applicable under 3504(h).

Robert Veeder—395-4814

**Extension of the Expiration Date of a
Currently Approved Collection Without
any Change in the Substance or in the
Method of Collection**

- Immigration and Naturalization
Service, Department of Justice
Civilian Complaint Form (G-767)
On occasion
Individuals or households

Under the direction of the Director of the Immigration and Naturalization Service's Office of Professional Responsibility, this form is a convenient method provided to the public for submitting complaints. The information obtained thereon is used to locate improprieties, if any, in the conduct of Service employees: 1,000 respondents, 250 hours; not applicable under 3504(h).

Robert Veeder—395-4814

Larry E. Miesse,

Agency Clearance Officer, Systems Policy
Staff, Office of Information Technology,
Justice Management Division, Department of
Justice.

[FR Doc. 9909 Filed 4-12-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

**Employment and Training
Administration**

**Employment Transfer and Business
Competition Determinations Under the
Rural Development Act; Applications**

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the consolidated Farm

and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operation facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
2. Employment trends in the same industry in the local area.
3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.
4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland,

Director, U.S. Employment Service,
Employment and Training
Administration, 601 D Street, N.W.,
Room 8000, Patrick Henry Building,
Washington, D.C. 20213.

Signed at Washington, D.C. this 10th day of April 1984.

Joseph Seiler,

Director, Office of Program Operations.

**APPLICATIONS RECEIVED DURING THE WEEK
ENDING APRIL 14, 1984**

Name of applicant and location of enterprise	Principal product or activity
Wild Blueberry Company of Maine Machias, Maine.	Canning and freezing of wild blueberries.

[FR Doc. 84-9919 Filed 4-12-84; 8:45 am]

BILLING CODE 4510-30-M

Wage and Hour Division

**Certificates Authorizing the
Employment of Learners at Special
Minimum Wages**

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062), as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25 as amended.)

Flushing Shirt Mfg. Co., Inc.,
Grantsville, MD; 1-18-84 to 1-17-85; 10 percent of the total number of factory production workers for normal labor turnover purposes. (Men's shirts)

The following certificate was issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and 522-30 to 522.35, as amended.)

Somerset Mfg. Co., Inc., Somerset, PA:
3-8-84 to 3-7-85; 5 percent of the total number of factory production workers

for normal labor turnover purposes. (Ladies' slips and sleepwear)

Each certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or consideration thereof on or before April 30, 1984.

Signed at Washington, D.C. this 5th day of April 1984.

Arthur H. Korn,

Authorized Representative of the Administrator.

[FR Doc. 84-8899 Filed 4-12-84; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84-30; Exemption Application No. D-3990 et al.]

Grant of Individual Exemptions; The Bendix Corp.; Salaried Employees' Savings and Stock Ownership Plan

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied

with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

The Bendix Corporation Salaried Employees' Savings and Stock Ownership Plan (the Plan) Located in Southfield, Michigan

[Prohibited Transaction Exemption 84-30; Exemption Application No. D-3990]

Exemption

The restrictions of section 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) the acquisition on January 31, 1983 of certain notes (the Notes) of the Allied Corporation (Allied) which was the sponsor of the Plan at the time of the acquisition of the Notes; and (2) the holding of the Notes by the Plan.

Written Comments

Two written comments were received by the Department. One written comment was not directed toward the subject matter of the proposed exemption but was directed toward administrative problems which the commentator was having with the Plan. The other written comment was submitted by the applicant. The applicant requested that an amendment be made to the final exemption which would permit the continued holding of the Notes. Although the Notes presently held by the Plan represent less than 25 percent of the total Allied notes

outstanding, this percentage was exceeded at the time of their acquisition. Since it is not clear that any subsequent holding of the Notes by the Plan would qualify under the "marketable obligation" rules of section 407(e) of the Act, the applicant has requested that the exemption permit the continued holding of the Notes beyond June 30, 1983 as stated in the notice of proposed exemption. The granted exemption reflects the suggested amendment.

Effective Date: The effective date of this exemption is January 31, 1983.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 22, 1983 at 48 FR 33565.

For Further Information Contact: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

MEBA Training Plan (the Plan) Located in Baltimore, Maryland

[Prohibited Transaction Exemption 84-31; Exemption Application No. L-4156]

Exemption

The restrictions of section 406 (a) and 406(b)(1) and (b)(2) of the Act¹ shall not apply to the proposed cash sale of a parcel of real property located in the Easton District of Talbot County, Maryland (the Property) by the Plan to District No. 1-PCD, MEBA, provided that the amount received by the Plan is no less than the fair market value of the Property on the date of sale.

The Department specifically notes that in granting this exemption the Department expresses no opinion as to whether the Plan's acquisition or holding of the Property violated any provision of Part 4 of Title I of the Act. The Department further notes that since the appraisal provided by the applicant for the case record states the fair market value of the Property as of January 1, 1983, such amount may not currently represent the fair market value of the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 1, 1983 at 48 FR 14086.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

¹Since the Plan is a welfare plan, there is jurisdiction only under Title I of the Act.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 10th day of April, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 84-10006 Filed 4-12-84; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-4060 et al.]

Proposed Exemptions; the Defined Contribution Pension Plan and Trust for Employees of Benzing, Inc.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of

the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons

are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Defined Contribution Pension Plan and Trust for Employees of Benzing, Inc. (the Money Purchase Plan) and the Profit Sharing Plan and Trust for Employees of Benzing, Inc. (the Profit Sharing Plan) (Collectively, the Plans) Located in Orlando, Florida

[Application Nos. D-4060 and D-4082]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E), of the Code, shall not apply effective November 1, 1982, to the consummated acquisition and holding by the Profit Sharing Plan and the prospective acquisition and holding by the Plans of third party security agreements (the Notes), generated from insurance premium financing, from Benzing, Inc. (the Employer), provided that: (1) no more than 25% of the assets of each of the Plans is invested in premium financing arrangements; (2) each of the Notes is acquired for no more than its fair market value; (3) the Notes are guaranteed by the Employer; and (4) decisions regarding acquisition and holding of the Notes by the Plans are made by the trustee of the Plans, Florida National Bank (the Trustee).

Effective Date: If the proposed exemption is granted, it will be effective November 1, 1982.

Temporary Nature of Exemption: If granted, the exemption will be temporary in nature and will expire 7 years after the date of grant.

Summary of Facts and Representations

1. Both of the Plans were established in August, 1980. On November 30, 1982, the assets of the Money Purchase Plan totaled \$135,274.21 and the assets of the Profit Sharing Plan totaled \$242,325.08. Each of the Plans on that date had four participants.

2. The Employer is in the business of selling insurance contracts as representatives for several insurance companies to persons engaged in the business of transporting commercial goods by truck. The insurance coverage

is limited to commercial vehicles and does not extend to the contents of the vehicles. The transactions for which exemptive relief is sought involve the acquisition and holding of the Notes by the Plans, which Notes are generated by the financing of the premiums paid by the insureds for the insurance coverage.

3. The premium financing arrangement requires the insured to make a cash down payment on or before the effective date of the insurance contract in a minimum amount of 18% of the total premium, including finance charges, under the contract. The balance of the premium must be paid in eight equal consecutive monthly installments commencing no later than thirty days following the effective date of the insurance contract.¹ The obligation of the insured to pay the amount of the insurance premium which is financed is collateralized through a security agreement, the Note, giving the lender a security interest in all unearned or return premiums under the insurance contract. In the event of a default by the insured, the insurance contract is cancelled by the Employer and the unearned premiums are remitted to the lender by the insurance company with whom the contract is written, thus repaying the loan in full.

4. The Employer has been a customer of the Trustee's commercial operations for the past 29 years. During this time the installment loan department of the Trustee has engaged in premium financing transactions with the Employer, such transactions being commonly referred to in the banking industry as "dealer" loans, and no loss has ever been experienced as a result of these transactions. In a recent twelve month period, approximately 2.8 million dollars in premiums were financed through the Trustee's installment loan department on behalf of the Employer.

The average commercial installment loans by the Trustee involving the Employer amount to \$950,000. The Trustee's total commercial installment loans amount to approximately 370 million dollars. Thus, the Trustee's involvement with the Employer constitutes less than 1% of the Trustee's installment loan business. The Employer also maintains a demand deposit checking account with the Trustee that represents less than 1% of the Trustee's total demand deposits.

5. The Plans' investment portfolios have in the past consisted solely of government securities. In 1982, after

assessing the Plan's investments, the Employer inquired of the Trustee whether the premium financing arrangements would be appropriate investments for the Plans. The Trustee made an independent and complete analysis of the premium financing arrangements prior to determining that they constituted good safe investments for the Plans. In addition to the history of no financial losses having been realized on such transactions by the Trustee's own installment loan department, the Trustee determined that the interest rate, which was then 12%,² produced a yield ranging between 19% and 21%. In comparing these yields to those being generated by the Plans' investments in government securities, the premium financing arrangements obviously provided a greater return.

The Employer offered to guarantee the repayment of any funds advanced by the Plans in the premium financing transactions as an added security feature. The Employer has never guaranteed the dealer loans to any lender other than the Plans inasmuch as the safety of the transactions has not warranted this additional safeguard.

6. In November, 1982, the Trustee invested \$61,031.20 of the Profit Sharing Plan's assets in 52 of the Notes by paying to the Employer the difference between the total annual premiums and the initial down payments made by the insureds. Prior to disbursement of the Profit Sharing Plan's assets to the Employer, the Trustee received notice from the insurance carriers that the insurance policies had been issued and were in full force and effect, and the Trustee was assigned the prepaid or unearned premiums under the insurance contracts. All payments due under the Notes were paid directly to the Employer. Because the Employer guaranteed all obligations of the insureds under the Notes, the monthly payments were timely remitted to the Trustee regardless of when payments were received by the Employer. No fees or other forms of compensation have been or will be paid either directly or indirectly to any party in interest with respect to the premium financing arrangements.

All the Notes acquired in November, 1982 have been paid in full.

7. The Money Purchase Plan has not invested in the premium financing arrangements. However, the Trustee, having analyzed such investment in terms of yield, liquidity, needs of the

Plans and their participants, and diversification, has determined that the Plans should so invest. The Trustee continuously monitors all investments of the Plans and will terminate or refrain from making any investments, including the premium financing, which do not meet the standards established by the Trustee in evaluating employee benefit plan investments. Further, the Trustee will limit investment by the Plans in the Notes to no more than 25% of each Plan's assets. As a further safeguard, no more than 10% of each Plan's assets will be invested in Notes of any one of the insureds.

8. The Trustee represents that there is no potential for it to select preferential Notes for its commercial loan department rather than for the Plans. Notes were and will be submitted by the Employer to the Trustee for consideration as an investment by the Plans, and the Trustee analyzes the Notes in terms of yield, liquidity, needs of the Plans and their participants, and diversification. If the Notes meet the Trustee's criteria for investment by the Plans, the Notes were or will be acquired for the Plans. The Trustee further represents that no Note is more secure than another, except that a Note which is sold to either of the Plans has been and will be fully guaranteed by the Employer, and all Notes are fully collateralized.

9. In summary, it is represented that the consummated and prospective transactions have satisfied and will satisfy the criteria of section 408(a) of the Act because: (1) the transactions have been and will be approved and monitored by an independent fiduciary, the Trustee; (2) the Notes have been and will be acquired by the Plans for no more than their fair market value; (3) no more than 25% of the assets of each of the Plans have been and will be invested in the Notes; (4) the Notes are unconditionally guaranteed by the Employer; and (5) the Trustee determined prior to engaging in the consummated transactions and will determine prior to engaging in future transactions that the Plans' investment in the Notes is in the best interest of the Plans and their participants and beneficiaries.

For Further Information contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

¹ Because the insurance contracts to which the premiums relate provide coverage for one year, under this repayment schedule the unearned or return premiums under the insurance policies will always exceed the balance of the premiums owed.

² The annual rate of interest on the premium financing is determined on the basis of the rate currently being charged by the Trustee's installment loan department on similar dealer loans.

408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C. this 5th day of April 1984.

Elliot L. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 84-10005 Filed 4-12-84; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on May 1,

1984, Room 1046, 1717 H Street, NW, Washington, DC.

In accordance with the procedures outlined in the *Federal Register* on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, May 1, 1984—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss staffing related issues at commercial nuclear power plants and changes made to the Staff's proposed final Fitness for Duty Rule. The discussion of staffing related issues will include consideration of the Staff proposed rule that would require licensees to have a senior manager on each shift with the following credentials: Bachelor's degree, five years nuclear power operating experience, and a senior operator's license. Industry's proposal to assure adequate on-shift operating experience at newly licensed nuclear power plants will also be discussed.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, David Fischer (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., e.s.t.

Dated: April 10, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-9878 Filed 4-12-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee Combined Meeting on Extreme External Phenomena/Structural Engineering/Seismic Design of Piping; Meeting

The Combined ACRS Subcommittee on Extreme External Phenomena/Structural Engineering/Seismic Design of Piping will hold a meeting on April 26, 1984, Room 1167, 1717 H Street, NW, Washington, DC.

In accordance with the procedures outlined in the *Federal Register* on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, April 26, 1984—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the NRC plans for conducting a seismic design research program.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, Industry, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., e.s.t.

Dated: April 9, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-9879 Filed 4-12-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-4 (Low Power)]

Long Island Lighting Co. (Shoreham Nuclear Generating Plant, Unit 1); Hearing

April 6, 1984.

On March 20, 1984, LILCO filed a Supplemental Motion for Low Power Operating License for the Shoreham Nuclear Power Station pursuant to 10 CFR 50.57(c). LILCO's motion requested approval for the following activities at Shoreham:

(a) Phase I: fuel load and precriticality testing;

(b) Phase II: cold criticality testing;

(c) Phase III: heatup and low power testing to rate pressure/temperature conditions (approximately 1% rated power); and

(d) Phase IV: low power testing (1-5% rated power).

On April 4, 1984, the Licensing Board convened a Conference of Counsel at the NRC Hearing Room in Bethesda, Maryland. Extensive arguments on all aspects of the low-power motion and the responses thereto enabled the Board to probe the underlying reasoning of the diverse views presented by the parties. Based upon a consideration of the LILCO motion and the facts alleged in its attached affidavits,¹ the matters contained in the responsive filings of the other parties and the arguments of counsel in depth, the Board concludes as follows:

1. LILCO has made a sufficient preliminary showing to justify holding a § 50.57(c) limited hearing.²

¹ Affidavits concerning the alleged facts and expert opinion were filed by Jack A. Notaro and William E. Gunther, Jr.; William G. Schiffmacher; Dr. Glenn G. Sherwood, Dr. Atambir S. Rao and Mr. Eugene C. Eckert; and William J. Museler.

² 10 CFR 50.57(c) provides: An applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing, pursuant to this paragraph (c), for an operating license authorizing low-power testing (operation at not more than 1 percent of full power for the purpose of testing the facility), and further operations short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Prior to taking any action on such a motion which any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is controversy, in the form of an initial decision with respect to the contested activity sought to be authorized. The Director of Nuclear Reactor Regulation will make findings on all other

2. The Board will be required to determine whether there is reasonable assurance that the activities associated with LILCO's request for a low-power license can be conducted without endangering the health and safety of the public, in the absence of resolution by another licensing board of the emergency diesel generator contentions related to full-power operation.

3. The provision of § 50.57 regarding low-power operations must be read together with the requirements of GDC-17³ concerning emergency power needs for full-power operations.

4. If the evidence shows that the protection afforded to the public at low power levels without the diesel generators that are required for full-power operations, is equivalent to (or greater than) the protection afforded to the public at full-power operations with approved generators, the LILCO's motion should be granted.

5. In making such determinations, the record establish the following:

(a) Assuming an accident such as a LOCA at five percent power, how much time would plant operators have before emergency core cooling was necessary, and

(b) Could such core cooling be supplied within that time.

6. An expedited hearing should be held on the discrete issues described above, to the extent that such matters are reasonably relevant to a low-power license.

The Board heard the opinions of all the parties upon scheduling of any hearing which might be held. We exercise our judgment on scheduling in accordance with our decision above. We find that the expedited schedule set forth below will not prejudice any party to this proceeding.

Date	Event
Apr. 6-16, 1984	Discovery.
Apr. 19, 1984	NRC Staff Supplemental SER.
Apr. 20, 1984	All direct written testimony filed.

matters specified in paragraph (a) of this section. If no party opposes the motion, the presiding officer will issue an order pursuant to § 2.730(e) of this chapter, authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on the matters specified in paragraph (a) of this section and to issue a license for the requested operation.

³ GDC-17 requires that electric power systems assure that in the absence of either the onsite or offsite power system, (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

Date	Event
Apr. 24-28, 30 through May 5, 1984, 1984.	Hearing.

No further adjudicatory hearing days will be scheduled in this matter.

Discovery shall be limited to documents and depositions. We expect the parties to exercise the maximum cooperation in this regard. All prefiled written testimony must be in question/answer format. Testimony filed April 20, including that for Judge Johnson, shall be sent to the Bethesda Office. All filings shall be hand delivered or expedited delivery, and no additional time shall be allowed for mailing. All filings shall be in the hands of the Board not later than 3:30 p.m. on the date due.

Parties to this proceeding are reminded that they have an affirmative duty to promptly inform the Board of any and all changes in circumstances which might impact upon our hearing on the issues before it.

Standards of practice have been established by the Commission governing the appearance and practice in adjudicatory proceedings. The Rules of Practice expressly provide that parties and their representatives are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law. Counsel and parties have always conducted themselves with propriety and decorum in the past, and the Board is confident that orderly and expeditious procedures will continue to be followed.

Hearing will commence at 9:00 a.m., local time, on Tuesday, April 24, 1984 at Courtroom 1, State Office Building, Veterans Memorial Highway, Hauppauge, New York 11787.

It is so ordered.

Dated at Bethesda Md., this 6th day of April 1984.

For the Atomic Safety and Licensing Board.
Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 84-9877 Filed 4-12-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, May 3, 1984

Thursday, May 10, 1984
 Thursday, May 17, 1984
 Thursday, May 24, 1984
 Thursday, May 31, 1984

These meetings will convene at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340,

1900 E Street, NW., Washington, D.C. 20415, (202) 632-9710

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

April 4, 1984.

[FR Doc. 84-9900 Filed 4-12-84; 8:45 am]

BILLING CODE 5325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Fish Propagation Panel; Meeting

AGENCY: Fish Propagation Panel of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of closed meeting to be held in addition to previously announced open meeting.

Status: Closed.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming closed meeting of its Fish Propagation Panel. This executive session of the Panel will immediately follow the previously-announced open meeting scheduled for April 2, 1984. The executive session may be properly closed to the public under the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I, 1-4) and the Government in the Sunshine Act (5 U.S.C. 552b).

DATE: April 2, 1984.

ADDRESS: The meeting will be held in the Peninsula East Room of the Seattle Airport Hilton, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Schneider, 503-222-5161.

Edward Sheets,
 Executive Director.

[FR Doc. 84-9945 Filed 4-12-84; 8:45 am]

BILLING CODE 000-00-M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program: U.S. Postal Service/City of New Orleans, Louisiana, and advance notice of modification to an existing system of records.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to conduct a computer matching program, and to propose the addition of a new temporary routine use

to system USPS 050.020, Finance Records—Payroll System.

DATE: Any interested party may submit written comments regarding the matching program and the proposed new routine use. Comments on this notice must be received on or before May 14, 1984.

ADDRESS: Comments may be mailed to Records Officer, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260-5010, or delivered to Room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected in Room 8121 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing a new temporary routine use for system USPS 050.020, Finance Records—Payroll System, in connection with its plans to begin identifying postal employees who are also on the employment rolls of the City of New Orleans, Louisiana. The routine use, if adopted, will be in effect for a period of one year from its effective date. The purpose of this proposed action is to determine whether suspected violations of Federal or State laws or Postal Service regulations have occurred in connection with the improper receipt of dual benefits by these employees. Of particular concern is the possible misuse of sick leave or the improper receipt of benefits under the workers' compensation program. Set forth below is the information required by the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of Computer Matching Program

In accordance with 39 U.S.C. 404(a)(7), regarding investigation of postal offenses and civil matters relating to the Postal Service, the Postal Service proposes to perform a match by computer of employees on the payroll of the New Orleans Post Office against the City of New Orleans' listing of its employees. In connection with a request received from the City of New Orleans' Department of City Civil Service (NOCCS), the NOCCS has agreed to provide a computer tape listing of its employees by name and social security number which the Postal Service will match against its Payroll System files for the purpose of identifying Postal

Service employees who appear on both lists. Postal Service Payroll System files contain general payroll information, including name, social security number, salary, benefit deductions, leave data, addresses, records of attendance and other relevant payroll information.

Upon completion of the match, and after the list of "matched" employees is compiled, the Postal Service will return to NOCCS its computer tape and will disclose to NOCCS only that information which is necessary to make a thorough analysis for determining which of the listed persons appear to have received NOCCS benefits improperly. The information will be limited to time and attendance and absence analysis records except in unusual (but currently unforeseen) cases where there may be a need to disclose the Postal Service's records of actual payments to the employees. All information obtained or utilized will remain under the control of the Postal Inspection Service and/or the authorized administrators or certification officers of the NOCCS. Once identified, all records on nonsuspect cases, compiled as a result of this matching effort, will be promptly destroyed. In suspect cases, individual investigative case files will be established within the parameters of Privacy Act System USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983).

In accordance with the Office of Management and Budget guidelines for conducting computer matching programs, the Postal Service has obtained a signed agreement from the NOCCS specifying that the information released by the Postal Service will be used for purposes of the computer match and for no other purposes, and specifying that the information will be safeguarded against unauthorized disclosure.

Proposed System Modification To Add New Routine Use

Accordingly, on a one-time basis, the Postal Service proposes to disclose a limited amount of information from the payroll records of certain postal employees of the City of New Orleans, Louisiana, Department of City Civil Service (NOCCS). This information will be used to identify postal employees who may have improperly received compensation or benefits from either the Postal Service or the NOCCS. The Postal Service believes that one basic reason for maintaining employee payroll records is to protect the legitimate financial interests of the Government; therefore, such a routine use is

compatible with the purpose of maintaining these records. System USPS 050.020 last appeared in 48 FR 55791 dated December 15, 1983.

As provided in 5 U.S.C. 552a(e)(11) for new routine uses, interested persons are invited to submit written views or arguments on the routine use proposed. After any comments submitted have been considered, final notice of the routine use will be published. Accordingly, it is proposed to modify system USPS 050.020, Finance Records—Payroll System, to add a new temporary routine use to allow this disclosure as follows:

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

29. (Temp.) Disclosure of information about particular postal employees on the employment rolls of the City of New Orleans, Louisiana, may be made to the New Orleans' Department of City Civil Service (NOCCS) for comparison with the NOCCS time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year from its effective date.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-9867 Filed 4-12-84; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

In the matter of applications of the Cincinnati Stock Exchange, for Unlisted Trading Privileges in Certain Securities, Securities Exchange Act of 1934. April 4, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Alpha Industries, Inc.

Common Stock, \$.25 Par Value (File No. 7-7410)

Beneficial Standard Corporation

Class A Common Stock, \$.50 Par Value (File No. 7-7411)

CONROCK Co.

Capital Stock, \$.50 Par Value (File No. 7-7412)

Prentice-Hall, Inc.

Common Stock, \$.33 1/3 Par Value (File No. 7-7413)

Superior Industries International, Inc.

Common Stock, \$.50 Par Value (File No. 7-7414)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 30, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-9990 Filed 4-12-84; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

In the Matter of Applications of the Philadelphia Stock Exchange, Inc., for Unlisted Trading Privileges in Certain Securities, Securities Exchange Act of 1934. April 9, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Castle & Cooke, Inc.

Common Stock, No Par Value (File No. 7-7415)

Mellon National Corporation

Common Stock, \$.50 Par Value (File No. 7-7416)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 30, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-9991 Filed 4-12-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish notice in the *Federal Register* that the agency has made such a submission.

DATE: Comments must be received on or before May 18, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible.

Copies: Copies of the proposed Questionnaire, the request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538.

OMB Reviewer: J. Timothy Sprehe,
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-4814.

Information Collection Submitted for Review

Title: Vietnam-era Veteran and Entrepreneurship Questionnaire
Frequency: One time, nonrecurring
Description of Respondents: Vietnam Veterans engaged in a small business
Annual Responses: 485
Annual Burden Hours: 728
Type of Request: New.

Dated: April 10, 1984.

Elizabeth M. Zaic,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 84-9993 Filed 4-12-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #3025; Amendment #6]

Texas; Declaration of Physical Disaster Loan Area Pursuant to Pub. L. 98-166

The above numbered declaration (48 FR 55798, Amendments #1-48 FR 57396, #2-49 FR 5016, #3-49 FR 7179, #4 49 FR 7688 and #5-49 FR 9989) is amended pursuant to the Secretary of Agriculture's designation authorizing Farmers Home Administration (FmHA) to accept emergency loan applications in the following area:

STATE OF TEXAS

FmHA		Incident and date	Counties
Number	Date		
SOB2.....	03/19/84	Losses caused by severe drought to all crops beginning June 1, 1983, through September 30, 1983.	Armstrong.
SOB2.....	03/21/84	Damages and losses to crops caused by drought beginning April 1, 1983, and continuing through December 3, 1983.	Coleman, Hamilton and Wilbarger.

STATE OF TEXAS—Continued

FmHA		Incident and date	Counties
Number	Date		
SOB2.....	03/21/84	Damages and losses to crops caused by drought beginning May 1, 1983, and continuing through November 30, 1983; Lamb County is also named for an early freeze occurring in September 1983, and hailstorms occurring on May 20, and June 7-10, 1983.	Concho and Lamb.

As a result of this designation, I have determined the above counties in the State of Texas constitute a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status: corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns.

The interest rates for eligible applicants under this designation are as follows:

	Percent
Agricultural enterprises with credit available elsewhere.....	10.5
Agricultural enterprises without credit available elsewhere.....	8.0
Non-farm small business (economic injury).....	8.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic Injury for non-farm small businesses may be filed until the close of business on September 19, 1984, in Armstrong County and on September 21, 1984, in the other five Counties. The number assigned to this disaster is 3025 for Physical damage to eligible agricultural enterprises and is 605801 for Economic Injury. Eligible enterprises may file applications for loans for physical damage or economic injury at: U.S. Small Business Administration, Area 3 Disaster Office, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, (800) 527-7735 and in

Texas (800) 442-7206, or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 9, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-9994 Filed 4-12-84; 8:45 am]

BILLING CODE 8025-01-M

Approval of a Small Business Defense Production and Research and Development Pool

AGENCY: Small Business Administration (SBA).

ACTION: A notice that in accordance with the Defense Production Act of 1950 (64 Stat. 708), as amended, and Sections 9 and 11 of the Small Business Act, as amended, the Small Business Administration has approved an application for a Small Business Defense Production and Research and Development Pool submitted by the Small Business Technology Group (SBTG), Burlington, Massachusetts. The SBTG pool was approved with the advice and consent of the Attorney General and the Chairman of the Federal Trade Commission, as required by Sections 9 and 11 of the Small Business Act, as amended.

SUMMARY: Pursuant to the Small Business Act (Pub. L. 85-536, as amended) and 13 CFR 125.7, this notice contains summaries of the purpose and proposed activities of SBTG, and an identification of individual pool members.

Purpose

(1) To contribute to the national defense effort by obtaining and performing, as a group, contracts for the production of articles, equipment, supplies and materials, and the furnishing of services necessary for military and related defense purposes. (A small business defense production pool.)

(2) To carry on activities related to research and development, such as:

- Collecting research information related to a particular industry for dissemination to participating members;
- Understanding and utilizing applied research;
- Constructing, acquiring, or establishing laboratories and other facilities for the conduct of research;
- Conducting applied research on a protected, proprietary, and contractual basis with member or non-member firms, government agencies, and other;

- Prosecuting applications for patents and rendering patent services for participating members;
- Initiating negotiations and administering such contracts;
- Negotiating and granting licenses under patents held under the joint pool programs;
- Establishing a corporation designed to exploit particular patents obtained by the pool (a small business research and development pool).

(3) To enable persons, firms, or corporations to associate for the purpose of providing, through diversification and range of facilities, laboratory, testing and productive capacity permitting members, through the corporation, to identify, negotiate, administer and perform such contracts for applied research, and/or to prosecute patent applications from which said members, as persons, firms, or corporations, otherwise would be excluded due to their respective limited facilities, scientific ideas, affiliations and backgrounds. (A small business defense production and research and development pool.)

Activities:

(1) System areas:

- Command and Control
- Intelligence Information Fusion and Analysis
- Communications Networks and Links
- Area Jamming and Deception
- Ground-based Imaging

(2) Technical areas:

- Systems Management
- Software
- Man Machine Interface
- Large Data Base, Fail-Safe, ADPE
- IR Imaging Devices
- Millimeter Wave Devices
- Laser Devices
- Power Sources and Distribution
- Structural Materials and Design
- Environmental Techniques.

Pool members:

- Joanne F. McCrea, President, Small Business Technology Group, 87 Second Avenue, N.E., Industrial Park, Burlington, Massachusetts 01803
- Dr. Fritz Bien, President, Spectral Sciences, Inc., 99 South Bedford Street, Burlington, Massachusetts 08103
- Mr. William E. Foster, President, Stratus Computer, Inc., 17 Strathmore Road, Natick, Massachusetts
- Ms. Christine King, President, Expedition Electronics Corporation, 220B Route 15, Jericho, Vermont 05465
- Ms. Shirley Coverdale, President, Coverdale Associates Inc., 132 Adams Street, Newton, Massachusetts 02158

Mr. G. Richard Huguenin, President, Millitech Corporation, Amherst Fields Research Park, Amherst, Massachusetts 01002

Dr. Edward P. Marram, President, Geo-Centers, Inc., 320 Needham Street, Newton Upper Falls, MA 02164

Mr. John C. Rennie, President, Pacer Systems, Inc., 87 Second Avenue, Northwest Industrial Park, Burlington, Massachusetts 01803

EFFECTIVE DATE: SBTG was authorized to enter into contracts with the government effective January 13, 1984.

FOR FURTHER INFORMATION CONTACT: Roy Rodgers, Office of the Associate Administrator for Procurement and Technical Assistance, Room 600, 1441 L Street, NW., 20416. Telephone (202) 653-6635.

This notice is published pursuant to Sections 9(d)(2) and 11(b) of the Small Business Act as amended.

Dated: April 4, 1984.

James C. Sanders,
Administrator.

[FR Doc. 84-10003 Filed 4-12-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: National airspace review plan; revision 2.

SUMMARY: On April 22, 1982, the National Airspace Review (NAR) plan was published in the *Federal Register* (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. This comprehensive plan contained an administrative structure and detailed task assignments which has already resulted in recommendations to the FAA. On February 3, 1983, a revision to the original plan was published in the *Federal Register* (48 FR 5202). This notice outlines changes which have been made to the February 3, 1983, revision, as of this publication date, and includes the revised plan in its entirety.

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Karl D. Trautmann, Manager, Special Project Staff, National Airspace Review, AAT-30, Room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 202-426-3560.

SUPPLEMENTARY INFORMATION: On April 22, 1982, the NAR plan was published in the Federal Register (47 FR 17448). In addition, Revision 1 to the plan was published in the Federal Register (48 FR 5202) on February 3, 1983. As a result of subsequent Executive Steering Committee (EXCOM) meetings and the knowledge gained since the plan was initially revised, a second revision to the plan is necessary. Changes are listed below, and are included in the revised plan in its entirety which follows:

(1) As an expressed desire of EXCOM members and the Administrator, the NAR schedule has been further condensed by combining some task assignments, deleting others, and reducing the time frame between certain meetings as well as the duration of others.

(2) A review of task group assignments was made to verify the validity of all study areas. Six assignments identified in the February 3, 1983, Federal Register publication of the revised NAR plan were accomplished through normal administrative activities and therefore, were removed from the schedule. Four additional task assignments were identified and, as requested, have been included within the review schedule. One of these assignments has been combined with an already scheduled task group meeting.

(3) After the completion of all task assignments, information dissemination will continue through periodic reports and briefings, recommendations status tracking, quarterly status reports, semi-annual updates of the NAR Implementation Plan, special implementation studies, and interim and final reports.

(4) The time frame for EXCOM meetings devoted to reviewing task group staff studies has been reduced. However, EXCOM meetings will be scheduled in the spring and fall of 1985 to discuss and provide information on the NAR recommendations and to address recommendations implementation, as well as other studies that are under consideration for addition to the NAR study phase.

NATIONAL AIRSPACE REVIEW PLAN Purpose

The purpose of the NAR is to review current ATC procedures, flight regulations, and airspace for the purpose of validating the current system and identifying near-term changes that will simplify operations and promote greater efficiency for all airspace users. The NAR will match airspace allocations and air traffic procedures to technological improvements and fuel efficiency programs. As a result of NAR

studies, recommended changes to the present air traffic system will be integrated into associated research and development efforts. These changes will provide the operational framework for moving into the next generation National Airspace System.

The first revision to the plan resulted in reducing the original duration of the study phase of the program from May 1985 to late 1984. The current revision condenses the existing task group schedule further, with the current NAR study assignments to be completed by September 1984.

Objectives

There are three main objectives of the NAR:

Objective 1 is to develop and incorporate into the air traffic system a more efficient relationship between traffic flows, airspace allocation, and system capacity. This will involve the use of improved air traffic flow management to maximize system capacity and improved airspace management.

Objective 2 is to review and eliminate, wherever possible, governmental restraints to system efficiency levied by Federal Aviation Regulations and FAA handbooks. The intent is to reduce complexity and simplify the ATC system.

Objective 3 is to revalidate ATC services within the National Airspace System with respect to state-of-the-art and future technological improvements. This will entail a complete review of separation criteria, TCA/TRSA requirements, IFR/VFR services to the pilot, etc.

Around these objectives evolved the proposed list of task areas to be studied.

Administrative structure

To effectively manage a program of this magnitude, an organizational structure was developed to provide the necessary direction and coordination. It consists of: (1) An Executive Steering Committee; (2) a Program Manager; (3) a Program Management Staff; and (4) Task Groups. A brief description of the role and responsibilities of each entity is listed below.

The Executive Steering Committee (EXCOM) is composed of members from the FAA, DOD, and a cross section of aviation industry organizations. The membership is as follows: Chairman—Deputy Administrator of the FAA, (ADA-1); Executive Director, FAA, Associate Administrator for Air Traffic, (AAT-1).

Members Organizations:

FAA—Federal Aviation Administration

DOD—Department of Defense
ATA—Air Transport Association
NBAA—National Business Aircraft Association
RAA—Regional Airline Association
AOPA—Aircraft Owners and Pilots Association
EAA—Experimental Aircraft Association
HAI—Helicopter Association International
NATA—National Air Transport Association

Responsibilities of the EXCOM are to:

1. Review staff studies and progress reports on TG activities to insure that recommendations meet the intent and purpose of the NAR.

2. Provide guidance by recommending further study in areas where, in the opinion of the committee, TG recommendations fall short of stated program objectives.

3. Recommend to the Federal Aviation Administrator, adoption or non-adoption of TG proposals associated with the NAR.

The Program Manager (PM) is Karl D. Trautmann, AAT-30, Manager, special Projects Staff, Air Traffic Service. PM responsibilities are to:

1. Provide liaison between the Program Management Staff (PMS) and FAA organizational elements and provide administrative services which are required.

2. Report directly to the EXCOM providing staff studies and status reports on TG activities.

3. Select TG chairmen.

4. Supervise program development and implementation.

5. Supervise the PMS to insure a systematic approach is taken as development and implementation progresses.

6. Determine the adequacy and validity of TG's recommendations.

The Program Management Staff (PMS) is composed of six full-time members. The PMS members are:

George R. Booth, AAT-31.1
Joe F. Stephens, AAT-32.1
John Watterson, AAT-32.2
Stephen C. Harless, AAT-33.1
Theodore J. Clark, Jr., AAT-33.2
Lt. Col. Michael Ball, USAF, AAT-34.1

PMS responsibilities are to:

1. Recommend TG chairmen and participants to PM.

2. Monitor TG progress.

3. Forward TG reports to the PM.

4. Provide interface between TG's to insure compatibility of recommendations.

5. Provide guidance and technical expertise to TG's.

6. Coordinate all program activities to insure a smooth transition occurs from one TG to the next.

7. Track implementation of TG recommendations.

8. Evaluate candidates for contractual service requirements in support of the NAR program.

9. Recommend specific contractors to the PM.

10. Develop, review, and update program budget requirements.

TG members have been selected from the aviation industry (management and labor), and Federal and state government aviation agencies. Personnel selected will possess expertise related to the specific task assignment. A 10 member group is usually composed of an FAA member, a member from a service branch of the DOD, and 8 members normally selected from other member NARAC organizations. The responsibilities of each TG are to:

1. Review and analyze data related to the risk assignment.

2. Identify system impact of recommended changes.

3. Provide regular reports to the PMS on TG progress.

4. Submit final recommendations, via staff study, to the PMS.

TG composition should not exceed 10 members. However, the exact number will be determined by the PMS depending on task assignment and length of study. Limiting the size of each TG will prevent some organizations that have shown an interest in specific TG's or assignments from participating as group members. However, the FAA recognizes the expertise of the various entities and offers them an opportunity to provide input to specific TG's. The TG meetings will be announced in the *Federal Register* at least 15 days in advance and will be open to the public. Interested parties may submit, in writing, recommendations relative to the task assignment prior to the TG meeting. Those comments will be given full consideration during the deliberation period. Additionally, organizations may present their views through a represented organization in the TG.

Task Groups (TG)

TG 1-1 *Airspace for Special Use*

Military Training Routes—(TG 1-1.1) completed.

Study Date: June 7, 1982. (3 weeks).

The Military Training Route program should be reviewed, on a national basis, to determine the adequacy of route depiction and information dissemination. An overall review of

existing procedures for both DOD and FAA should be conducted in light of experience gained since the program began in 1978.

Temporary Special Use Airspace—(TG 1-1.2) completed.

Study Date: September 7, 1982. (3 weeks).

Temporary special use airspace should be studied for possible changes to increase efficiency of airspace usage. Areas to be reviewed are leadtime requirements for charting and a means to accommodate composite training.

Real-Time Joint Use—(TG 1-1.2) completed.

Study Date: September 7, 1982. (3 weeks).

The joint use of designated special use airspace requires close coordination and cooperation between using and controlling agencies. The concept of real-time joint use requires study to develop a means to effectively and efficiently administer its use.

Special Use Airspace Requirement Review—(TG 1-1.3) completed.

Study Date: November 8, 1982. (2 weeks).

Special use airspace should be reviewed, on a national level, to validate items such as establishment criteria, usage rates, and retention criteria.

Separation From Special Use Airspace—(TG 1-1.3) completed.

Study Date: November 8, 1982. (2 weeks).

Special use airspace is usually controlled by the using agency and released to them to conduct their activities. This has created concern over buffer zone and separation from special use airspace boundaries. A study is necessary to determine what, if any, separation requirements should be applied around these designated areas.

National Security Areas—(TG 1-1.4) completed.

Study Date: January 31, 1983. (3 weeks).

The concept of National Security Areas is to provide protective airspace in areas which presently do not qualify for special use airspace designation. This area should be evaluated with regard to need, criteria, charting, application, and relationship to special use airspace.

Flight Test Areas—(TG 1-1.4) completed.

Study Date: January 31, 1983. (3 weeks).

Flight test areas are presently not charted. A review of this type of activity should be accomplished to determine the need for charting and the best method to depict these areas.

Part 73—Review—(TG 1-1.5) completed.

Study Date: February 13, 1984. (2 weeks).

Part 73 of the Federal Aviation Regulations (FAR) concern special use airspace. A review of special use airspace categories under Part 73 and related procedures under Handbook 7400.2 is necessary for adequacy and redefinition as they related to previous task assignments under this TG study.

Participants

Chairman—FAA

Department of Defense
Aerospace Industries Association
Aircraft Owners and Pilots Association
Experimental Aircraft Association
Helicopter Association International
National Association of State Aviation Officials
Air Transport Association
Air Line Pilots Association
FAA, Airspace—Rules and Aeronautical Information Division, AAT-200
FAA, Procedures Division, AAT-300
FAA, Western-Pacific Region
FAA, Flight Service Station—Atlanta
FSS
FAA, Southern Region Facility

TG 1-2 *Terminal Airspace*

Terminal Control Areas—(TG 1-2.1) completed.

Study Date: June 7, 1982. (3 weeks).

Our intent is to review previous studies and reports concerning terminal control areas (TCA) and develop recommendations for a concept(s) of controlled airspace necessary for the conduct of safe flight in the terminal environment. Criteria, design, simplicity, and applicability will be considered.

Mandatory Communication Areas—(TG 1-2.2) completed.

Study Date: August 9, 1982. (3 weeks).

Terminal radar service areas (TRSA) will be reviewed to determine validity of this airspace concept along with previous study assignments. Previous TRSA studies, safety, user needs, efficiency, and simplicity will be major factors in this review.

Terminal Radar Service Area (TG 1-2.2) completed.

Study Date: August 9, 1982. (3 weeks).

TRSA's will be reviewed to determine validity of this airspace concept along with previous study assignments. Previous TRSA studies, safety, user needs, efficiency, and simplicity will be major factors in this review.

Control Zones, Transition Areas, Airport Traffic Area Evaluation—(TG 1-2.3) completed.

Study Date: October 4, 1982. (2 weeks).

There is growing concern over the present complexities of airspace assignments in terminal areas, including redundancies and overlap. A review of these areas will be conducted to simplify the entire concept.

Stage II/III Services Evaluation—(TG 1-2.4) completed.

Study Date: November 29, 1982. (1 weeks).

Present ATC services in terminal areas are divided into Basic, Stage II, and Stage III. These services will be reviewed to validate pilot/controller understanding, requirements, and application within the air traffic system. Additionally, this review will consider what ATC services are necessary as they would relate to previous NAR studies.

Additional Services IFR/VFR—(TG 1-2.5) completed.

Study Date: April 11, 1983. (2 weeks).

In addition to its primary function, the ATC system has the capability to provide (with certain limitations) additional services. This area should be reviewed to determine if services provided are sufficient to meet the needs of the aviation community. The TG would be expected to make recommendations as to specific improvements that may be necessary.

Uncontrolled Airports—(TG 1-2.5B) completed.

Study Date: June 6, 1983. (1 weeks).

There is a need to review uncontrolled airports to improve the safety of operations and to simplify/clarify operating procedures. The TG will thoroughly review the clarification of authority, traffic patterns, mix of traffic, and noise abatement responsibilities at uncontrolled airports.

Participants

Chairman—FAA

Aircraft Owners and Pilots Association
Air Transport Association
Air Line Pilots Association
Department of Defense
National Business Aircraft Association
National Association of State Aviation Officials
Experimental Aircraft Association
Helicopter Association International
Regional Airline Association
FAA, Procedures Division, AAT-300
FAA, Airspace-Rules and Aeronautical Information Division, AAT-200

TG 1-3 Routes

Random Routes—(TG 1-3.1) completed.

Study Date: September 7, 1982. (3 weeks).

The FAA's "Operation Free Flight" data have been analyzed and results indicate considerable fuel savings can be achieved if a program of this nature is implemented. This TG will study the concept of random routes, in both low and high altitude structures, for implementation on a national basis.

Alternate Airway Reduction and Reidentification—(TG 1-3.2) completed.

Study Date: November 8, 1982. (2 weeks).

The present alternate airway structure is still based largely on nonradar separation standards. With the increased use of radar, a study is needed to evaluate the possibility of eliminating unnecessary alternate airways and reidentify remaining routes taking into consideration ICAO standards. This would also contribute to a reduction in chart clutter.

Airway Realignment—(TG 1-3.2) completed.

Study Date: November 8, 1982. (2 weeks).

Jet routes and low altitude airways provide airspace protection, charted courses, and altitude information. A review of these routes is necessary to insure that they conform to existing traffic flows. Establishment and retention criteria of airways and jet routes should also be studied.

Fixed Routes (RNAV) Evaluation—(TG 1-3.2) completed.

Study Date: November 8, 1982. (2 weeks).

The use of area navigation opens many avenues for flight in the Random Route area. An evaluation of the fixed route concept for RNAV use is necessary to determine continued justification.

SID/STAR Evaluation—(TG 1-3.3) completed.

Study Date: February 22, 1983. (3 weeks).

While these routes and charts are of value to both pilot and controller, further study and evaluation are necessary regarding traffic flows and information depiction. A review is necessary to:

1. Determine their need.
2. Reduce complexity.
3. Simplify development criteria.
4. Insure system compatibility.

Preferential Arrival/Departure Routes—(TG 1-3.3) completed.

Study Date: February 22, 1983. (3 weeks).

These routes are designed to segregate traffic flows. This area should be evaluated for changes which will increase system efficiency and simplify the program while making this information available to the pilot.

Jet Routes/Airway Modeling—(TG 1-3.3) completed.

Study Date: February 22, 1983. (3 weeks).

A model for an improved airway/route structure should be developed to use in the En Route Navigation (VOR) Network Program.

Route System Concept—(TG 1-3.4) completed.

Study Date: May 31, 1983. (3 weeks).

During its deliberations, TG 1-3.2 began to develop a high altitude route system concept and requested that the NAR staff further refine this concept for subsequent review. TG 1-3.4 is charged with reviewing this high altitude route structure and route system concept and developing an optimized route system design concept.

Part 75—Elimination—(TG 1-3.5) completed.

Study Date: January 30, 1984. (2 weeks).

FAR Part 75, "Establishment of Jet Routes and Area High Routes," describes specific fixed routes from FL 180 through FL450. This area should be reviewed for possible exclusion from the regulatory process since the associated airspace is already designated in Part 71.

Participants

Chairman—FAA

Air Transport Association
National Business Aircraft Association
Aircraft Owners and Pilots Association
Aerospace Industries Association
Regional Airline Association
Air Line Pilots Association
Department of Defense
Helicopter Association International
FAA, Office of Flight Operations, AFO-700 (Currently AFO-200)
FAA, Airspace-Rules and Aeronautical Information Division, AAT-200
FAA, Southern Region Facility
FAA, Southwest Region

TG 1-4 Weather Programs

Weather Dissemination—(TG 1-4.1) completed.

Study Date: July 6, 1982. (3 weeks).

A longstanding area of concern for the FAA and aviation community is accurate and timely dissemination of real-time weather information. Although future enhancements are being developed, studies must be done to improve existing methods of disseminating aviation weather.

Participants

Chairman—FAA

Aircraft Owners and Pilots Association

Allied Pilots Association
Air Transport Association
National Business Aircraft Association
Department of Defense
National Weather Service
FAA, System Plans and Programs
Division, AAT-100
FAA, Procedures Division, AAT-300
FAA, New England Region
* * *

TG 1-5 US/Canada/Mexico Interface
(Government participation only)

Facility Shutdown Agreement—(TG 1-5.1) completed.

Study Date: June 21, 1982. (1 week).
More dependence has been placed on nondomestic facilities for use in the ATC system. However, there is no formal agreement insuring notification of shutdown of these facilities in sufficient time to allow for adjustment in procedures and airspace designation. This group will develop a formal Memorandum of Agreement between nondomestic facilities to cover planned NAVAID shutdowns.

Canadian Airspace Category
Redefinition—(TG 1-5.2) completed.

Study Date: August 9, 1982. (2 weeks).
Canada is in the process of redefining its airspace, by category, to simplify their present system. A review of this action is needed to determine compatibility with the U.S. system or for possible U.S. adoption.

Common Airspace and Procedures
Integration—(TG 1-5.3) completed.

Study Date: September 12, 1983. (3 weeks).
Present airspace and procedural applications are different along U.S. border areas. This causes confusion among the flying public as well as control agencies. This group will study the feasibility of common procedures and airspace designation between the United States and Canada.

Participants

Chairman—FAA

Department of Defense
Transport Canada
FAA, Procedures Division, AAT-300
FAA, Maintenance Engineering
Division, APM-100
FAA, Great Lakes Region
FAA, Northwest Mountain Region
FAA, Office of Flight Operations, AFO-700 (Currently AFO-200)
FAA, Alaskan Region
FAA, New England Region
* * *

TG 1-6 Charts

VFR Charting—(TG 1-6.1) completed.
Study Date: July 6, 1982. (3 weeks).
Efforts are underway to improve information depicted on VFR Charts.

While a prototype series is planned, requirements and specifications need to be reviewed through the Interagency Air Cartographic Committee for evaluation.
RF Charts—(TG 1-6.2) completed.
Study Date: October 12, 1982. (2 weeks).

The present low and high altitude en route charts need review. Simplification and combination with military charting requirements should be considered. This would be in conjunction with Interagency Air Cartographic Committee efforts.

Instrument Approach Procedure
Charts—(TG 1-6.3) completed.

Study Date: January 3, 1983. (2 weeks).
A review of the charting aspects of Instrument Approach Procedures (IAP) is needed for amount of data required, charted features, and format.

Charted Visual Flight Procedures
Charts—(TG 1-6.3) completed.

Study Date: January 3, 1983. (2 weeks).
There is an increasing number of charted visual flight procedures and charts being developed. This area should be studied with regard to purpose, procedural application, and charting requirements.

SID and STAR Charts and the
Airport/Facility Directory—(TG 1-6.4) completed.

Study Date: November 29, 1983. (3 weeks).

TG 1-6.4 will review Standard Instrument Departure (SID) and Standard Terminal Arrival (STAR) charts and the Airport/Facility Directory (A/FD). Specific user requirements for the portrayal of procedural information on SID's and STAR's will be identified, defined, and evaluated by the group, which will also address existing problems related to human factors considerations. The group will discuss the effectiveness of the A/FD, its role in disseminating information, and supplemental information that should be included. The goal of this review is to preserve and promote quality, clarity, simplicity, and useability of departure and arrival chart publications.

Participants

Chairman—FAA

Aircraft Owners and Pilots Association
Experimental Aircraft Association
Allied Pilots Association
Department of Defense
National Association of State Aviation
Officials
National Business Aircraft Association
National Ocean Survey
Air Line Pilots Association
Air Transport Association
FAA, Southern Region

FAA, Western-Pacific Region
FAA, Procedures Division, AAT-300
FAA, Office of Flight Operations, AFO-700 (Currently AFO-200)
* * *

TG 1-7 US Airspace Reclassification

Airspace Classification—(TG 1-7.1) completed.

Study Date: January 3, 1983. (2 weeks).
A review of current airspace designation, including a proposed model for a U.S. Airspace Classification which is similar to a Canadian Airspace Proposal. ICAO proposals will also be discussed.

Airspace Application—(TG 1-7.2) completed.

Study Date: March 21, 1983. (3 weeks).
A model base for application of Airspace Classification needs to be developed and reviewed for national application.

Pilot Requirements—(TG 1-7.3) completed.

Study Date: June 13, 1983. (2 weeks).
A review of airspace classification as it relates to pilot certification/requirement/endorsement to certificate is needed for possible simplification and application to each airspace category.

Participants

Chairman—FAA

Department of Defense
Air Transport Association
National Business Aircraft Association
Regional Airline Association
Experimental Aircraft Association
Helicopter Association International
Aircraft Owners and Pilots Association
Airline Pilots Association
Transport Canada/Mexico
FAA, Procedures Division, AAT-300
FAA, New England Region
FAA, Northwest Mountain Region
FAA, Airspace—Rules and Aeronautical
Information Division, AAT-200
FAA, Office of Flight Operations, AFO-800
* * *

TG 2-1 Traffic Flow Management

Severe Weather Avoidance Plan
Evaluation—(TG 2-1.1) completed.

Study Date: May 9, 1983. (2 weeks).
A review, on a national basis, of the Severe Weather Avoidance Plan is necessary to determine:

1. Effectiveness of the present plan.
2. Changes that may be necessary for improvement.
3. The continued need for the plan.

Flow Management—(TG 2-1.2) completed.

Study Date: September 7, 1983. (3 weeks).

A review of the effectiveness of flow management on a national level.

Participants

Chairman—FAA

Regional Airline Association
Air Transport Association
National Business Aircraft Association
Department of Defense
Air Line Pilot Association
General Aviation Manufacturers Association
FAA, Great Lakes Region
FAA, Automation Division, AAT-500
FAA, Procedures Division, AAT-300
FAA, Boston ARTCC
FAA, Southwest Region
FAA, New York ARTCC
FAA, Operations Divisions, ATT-400
* * *

TG 2-2 Separation Standards

Separation Review (General)—(TG 2-2.1) completed.

Study Date: June 13, 1983. (3 weeks).

A review of separation standards as applicable in today's ACT radar environment and based on aircraft operating characteristics such as size and speed, with further consideration of airway acceptance and other identifiable factors which may increase the airport acceptance rate without decreasing safety. Appropriate separation standards in the En Route environment will also be reviewed.

Traffic Segregation by Category—(TG 2-2.2) completed.

Study Date: August 15, 1983. (3 weeks).

A look at the feasibility of separating aircraft and runway use by specific aircraft categories is needed. Procedures may be developed for some airports using this concept.

IFR Departure Procedures—(TG 2-2.2) completed.

Study Date: August 15, 1983. (3 weeks).

A review of IFR departures procedures relative to proposed FAAH 7110.65C change (AAT-320-82-6) is necessary. Topics to be covered will include procedural applications, terminology definitions, pilot and controller responsibilities, and diverse departures.

Special VFR Separation Review—(TG 2-2.3).

Study Date: April 23, 1984. (2 weeks).

A close look is required at Special VFR (SVFR) procedures and their application. This session will address both procedural and regulatory requirements of SVFR, including the high density airport control zones listed in FAR 93.113, within which SVFR weather minimums are not authorized for fixed-wing aircraft.

Parachute, Glider and Ultralights Operations—(TG 2-2.4) completed.

Study Date: January 4, 1984. (2 weeks).

Parachute, glider and recently the ultralight operations are increasing in number and are having more effect on the ATC system. These areas need review with regard to impact, information dissemination, and advisory/flight-following services.

Participants

Chairman—FAA

Air Traffic Control Association
Allied Pilots Association
Helicopters Association International
Department of Defense
Regional Airline Association
Aircraft Owners and Pilots Association
Air Transport Association
Air Line Pilots Association
FAA, Great Lakes Region
FAA, Oakland ARTCC
FAA, Office of Flight Operations, AFO-700 (Currently AFO-200)
FAA, Los Angeles TRACON
FAA, Southern Region
FAA, Procedures Division, AAT-300
* * *

TG 2-3 FAR Simplification and Reduction

Part 91—Subpart B Evaluation—(TG 2-3.1).

Study Date: April 30, 1984. (3 weeks).

Subpart B, "Flight Rules," of Part 91 needs review for simplification and reduction of regulations. This would include associated equipment requirements.

Part 77—Rewrite—(TG 2-3.2).

Study Date: July 9, 1984. (2 weeks).

Part 77, "Objects Affecting Navigable Airspace," is an area which should be analyzed and rewritten for simplification and clarity.

Participants

Chairman—FAA

Airline Pilots Association
Regional Airline Association
Aircraft Owners and Pilots Association
Department of Defense
National Business Aircraft Association
National Air Transportation Association
Aerospace Industries Association
National Association of State Aviation Officials
Helicopter Association International
FAA, Regulations and Enforcement Division, AGC-200
FAA, Central Region
FAA, Office of Flight Operations, AFO-700 (Currently AFO-200)
FAA, Airspace—Rules and Aeronautical Information Division, AAT-200
* * *

TG 2-4 Helicopter Operations

Helicopter Separation—(TG 2-4.1) completed.

Study Date: February 22, 1983. (3 weeks).

The unique operating characteristics of helicopters and their increasing use in the ATC system require a review of separation criteria presently employed with the possibility of reduction in some instances.

Helicopter Routes—(TG 2-4.2) completed.

Study Date: May 2, 1983. (2 weeks).

The possibility of special routes into and out of major terminals that would avoid the standard flow of traffic should be evaluated. This would provide the needed flexibility to make maximum use of terminal airspace while meeting the needs of the helicopter community.

Helicopter Charts—(TG 2-4.3) completed.

Study Date: August 1, 1983. (2 weeks).

The concept of separate charts for helicopters should be evaluated to provide the specialized information required to meet their needs. This group would make recommendations on:

1. The need for separate charts.
2. What should be depicted.

Helicopter Instrument Approach Procedures—(TG 2-4.4).

Study Date: July 23, 1983. (2 weeks).

The possibility of special helicopter instrument approach procedures with reduced development criteria and minima should be evaluated. Associated weather information dissemination requirements unique to rotorcraft operations will also be studied.

Participants

Chairman—FAA

National Business Aircraft Association
Department of Defense
Helicopter Association International
Air Transport Association
National Air Transportation Association
National Association of State Aviation Officials
American Helicopter Society, Inc.
FAA, Southern Region
FAA, Eastern Region
FAA, Office of Flight Operations, AFO-700 (Currently AFO-200)
FAA, Office of Airport Standards, AA-100
FAA, Houston ARTCC
FAA, Southwest Region
FAA, Rotorcraft Program Office, ARO-1
* * *

TG 2-5 ARTCC Infrastructure (Government participation only)

National Beacon Code Allocation Plan (NBCAP)—(TG 2-5.1) completed

Study Date: May 2, 1983. (1 week).

A review should be conducted with regard to the concept of NBCAP, its adequacy for providing code allocation, and operation effectiveness.

Participants

Chairman—FAA

Department of Defense
FAA, Great Lakes Region
FAA, Southern Region
FAA, Eastern Region
FAA, Southwest Region
FAA, Central Region
FAA, Alaskan Region
FAA, Northwest Mountain Region
FAA, Western-Pacific Region
FAA, New England Region
FAA, Operations Division, AAT-400
FAA, Procedures Division, AAT-300
FAA, Automation Division, AAT-500
* * *

TG 3-1 National Flight Data System

NOTAM Evaluation—(TG 3-1.1) completed.

Study Date: July 5, 1983 (3 weeks).

The Notice to Airmen system has grown complex and large. It should be reviewed for simplification, recategorization, and dissemination improvement.

Flight Data Dissemination—(TG 3-1.1) completed.

Study Date: July 5, 1983. (3 weeks).

The amount of information available to the flying public is growing at an increasing rate. This area needs study to determine adequacy and priority in regard to user requirements. It should also include military activity and airport information.

Flight Plan Format—(TG 3-1.2) completed.

Study Date: November 14, 1983. (1 week).

There are presently separate requirements and format for international, military, and civil flight planning. Each flight plan requirement should be studied for commonality and possible combination into one, simple, uniform format.

Airmen's Information Manual—(TG 3-1.3).

Study Date: June 4, 1984. (3 weeks).

A review of content and structure of this handbook is necessary.

Airport Information Service—(TG 3-1.4).

Study Date: May 14, 1984. (1 week).

A review of the use and content of airport information service broadcasts is necessary. There is a need to identify essential and nonessential information to keep these broadcasts short and concise.

Participants

Chairman—FAA

Air Line Pilots Association
International Air Transport Association
Helicopter Association International
Aircraft Owners and Pilots Association
Department of Defense
Regional Airlines Association
Air Transport Association
FAA, System Plans and Programs Division, AAT-100
FAA, Airspace-Rules and Aeronautical Information Division, AAT-200
FAA, Office of Airport Standards, AAS-300
FAA, Great Lakes Region
FAA, Alaskan Region
FAA, Washington FSS
* * *

TG 3-2 Oceanic

International Delegated Airspace—(TG 3-2.1) completed.

Study Date: January 4, 1984. (3 weeks).

The area from the continental limits to the Flight Information Region (FIR)/Control Area (CTA) lacks commonality and creates confusion in airspace designation and procedural application. This area should be reviewed for simplification.

Participants

Chairman—FAA

Air Transport Association
Department of Defense
International Air Transport Association
Helicopter Association International
National Air Transportation Association
Aerospace Industries Association
FAA, Procedures Division, AAT-300
FAA, Office of International Affairs, AIA-100
FAA, Southern Region
FAA, Alaskan Region
FAA, Eastern Region
* * *

TG 3-3 Handbook Reorganization (Government participation only)

The following FAA handbooks should be updated with regard to state-of-the-art improvements and also reorganized to put data in a more logical subject-related order for easier reference.

FAAH 7110.10—Flight Services—(TG 3-3.1).

Study Date: June 4, 1984. (3 weeks).

FAAH 7110.80—Data Communications—(TG 3-3.1).

Study Date: June 4, 1984. (3 weeks).

FAAH 7130.3—Holding Pattern Criteria—(TG 3-3.2).

Study Date: September 4, 1984. (3 weeks).

FAAH 7400.2—Airspace Matters—(TG 3-3.3).

Study Date: September 10, 1984. (2 weeks).

Participants

Chairman—FAA

Department of Defense
FAA, Systems Plans and Programs Division, AAT-100
FAA, Airspace-Rules and Aeronautical Information Division, AAT-200
FAA, Procedures Division, AAT-300
FAA, New England Region
FAA, Central Region
FAA, Atlanta FSS
FAA, Dayton FSS
* * *

TG 3-4 Handbook Reorganization (Procedures) (Government participation only)

The organizational structure of the following FAA handbooks should be reviewed and recommendations made to make data easier to find. The direction of this study is more toward structure than content.

FAAH 7210.3—Facility Operations and Administration—(TG 3-4.1).

Study Date: August 13, 1984. (3 weeks).

FAAH 7610.4—Special Military Operations—(TG 3-4.3).

Study Date: July 9, 1984. (3 weeks).

FAAH 7210.7—Flow Control Procedures—(TG 3-4.4) completed.

Study Date: January 30, 1984. (2 weeks).

FAAH 7110.83—Oceanic Air Traffic Control—(TG 3-4.5).

Study Date: July 30, 1984. (2 weeks).

Participants

Chairman—FAA

Department of Defense
FAA, Operations Division, AAT-400
FAA, Airspace-Rules and Aeronautical Information Division, AAT-200
FAA, Western-Pacific Region
FAA, Northwest Mountain Region
FAA, ARTCC, Washington, ARTCC
FAA, Air Traffic Control Tower Washington, National ATCT
FAA, Washington FSS
* * *

Issued in Washington, D.C. on April 6, 1984.

R. J. Van Vuren,

Associate Administrator for Air Traffic.

[FR Doc. 84-9965 Filed 4-12-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY**Office of the Secretary****Public Information Collection
Requirements Submitted to OMB for
Review**

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury

Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0134

Form Number: Form 1128

Type of Review: Extension

Title: Application for Change in
Accounting Period

OMB Number: New

Form Number: None

Type of Review: Existing Collection

Title: Request for Consent to Sale Free
of Tax Lien

OMB Reviewer: Norman Frumkin
(202) 395-6880, Office of Management
and Budget Room 3208, New Executive
Office Building, Washington, D.C. 20503.

Dated: April 9, 1984.

Gary Kowalczyk,

Departmental Reports, Management Office.

[FR Doc. 84-10004 Filed 4-12-84; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 73

Friday, April 13, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-403 amdt 1; 4/9/84]

Addition of Item to the April 10, 1984 Meeting

TIME AND DATE: 10:00 a.m., April 10, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

3a. Docket 41441 *Denham Aircraft Services Corp. II Fitness Investigation*; Order Reversing Recommended Decision and Issuing Certificate. (Memo 1983-B, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-10099 Filed 4-11-84; 4:02 pm]

BILLING CODE 6320-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday, April 19, 1984.

LOCATION: Third Floor Hearing Room 1111-18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Smoke Detectors: Update

The staff will brief the Commission on current State regulation of smoke detectors and provide an update of the Outreach Smoke Detector Program.

2. State and Local Cooperative Efforts

The staff will brief the Commission on State and local cooperative efforts.

STATUS: Closed to the Public.

3. Enforcement Matter OS #3086

The staff will brief the Commission on Enforcement Matter OS #3086.

4. Enforcement Matter OS #4999

The staff will brief the Commission on Enforcement Matter OS #4999.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

April 11, 1984.

[FR Doc. 84-10086 Filed 4-11-84; 12:36 pm]

BILLING CODE 6355-01-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, April 17, 1984; 9:30 a.m. (Eastern Time).

PLACE: Commission Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW. Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS OF BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Freedom of Information Act Appeal No. 84-02-FOIA-016-IN, concerning a request for access to a closed Title VII case file.
4. Freedom of Information Act Appeal No. 83-11-FOIA-108-MM, concerning a request for documents contained in an ADEA charge file.

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Consideration of Certain Subpoenas
3. Consideration of a Systemic Decision
4. Consideration of Certain ORA Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE

INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

Dated: April 10, 1984.

This Notice Issued April 10, 1984.

Treva McCall,

Executive Secretary to the Commission.

[FR Doc. 84-9986 Filed 4-10-84; 5:00 pm]

BILLING CODE 6750-06-M

4

FEDERAL RESERVE SYSTEM

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, April 18, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a meeting on April 16, 1984.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Request by the General Accounting Office for Board comment on a draft report regarding supervisory examinations of international banking facilities.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: April 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-10047 Filed 4-11-84; 11:08 am]

BILLING CODE 6210-01-M

5

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 2:30 p.m., Wednesday, April 18, 1984.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, 7th Floor Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.

2. Review of Central Liquidity Facility Lending Rate.

3. Proposed Rule: Corporate Central Federal Credit Unions, Part 704 NCUA Rules and Regulations.

4. Proposed Rule: Supervisory Committee Audits and Verifications, Part 701.12 NCUA Rules and Regulations.

TIME AND DATE: 10:30 a.m., Wednesday, April 18, 1984.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, 7th Floor Board Room.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.

2. Special Assistance Under Section 208(a) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

3. Termination of Cease and Desist Order. Closed pursuant to exemptions (8) and (9)(A)(iii).

4. Appeal of Revocation of Charter. Closed pursuant to exemptions (8) and (9)(A)(ii).

5. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT:

Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,
Secretary of the Board.

[FR Doc. 84-10052 Filed 4-11-84; 8:45 am]

BILLING CODE 7535-01-M

6

NATIONAL LABOR RELATIONS BOARD

TIME AND PLACE: 9:30 a.m., Thursday, April 2, 1984.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. Sections 552(c)(2) (internal personnel rules and practices), (c)(6) (disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy) and (c)(9)(B) (disclose information the premature disclosure of which would * * * be likely to significantly frustrate implementation of a proposed agency action * * *).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE

INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254-9430.

Dated: Washington, D.C., April 11, 1984.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 84-10086 Filed 4-11-84; 3:14 pm]

BILLING CODE 7545-01-M

7

PAROLE COMMISSION

PREVIOUSLY ANNOUNCED TIME AND DATE:

Tuesday, April 10, 1984—9:00 a.m. to 1:00 p.m.

CHANGES IN MEETING: Tuesday, April 10, 1984—2:30 p.m. to 5:30 p.m. The time of this meeting is being changed to accommodate a last minute rescheduling of the Commission's testimony before the House Appropriations Subcommittee.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 22 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE

INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5987.

Date April 9, 1984.

Joseph A. Barry,

General Counsel, Parole Commission.

[FR Doc. 84-10081 Filed 4-11-84; 1:48 pm]

BILLING CODE 4410-01-M

Estimate Report Federal Project

Friday
April 13, 1984

Part II

Department of Labor

Employment Standards Administration,
Wage and Hour Division

Minimum Wages for Federal and
Federally Assisted Construction; General
Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
DivisionMinimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions

are effective from their date of publication in the *Federal Register* without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas
Decisions to General Wage
Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the *Federal Register* without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the *Federal Register* are listed with each State.

Arizona:	
AZ83-5102	Mar. 4, 1983.
AX83-5105	Mar. 4, 1983.
California: CA83-5119	Sept. 16, 1983.
Delaware: DE82-3015	June 4, 1982.
Illinois: IL81-2004	Mar. 13, 1981.
Kentucky: KY84-1007	Mar. 16, 1984.
Louisiana:	
LA84-4003	Jan. 27, 1984.
LA84-4008	Feb. 17, 1984.
LA84-4010	Mar. 9, 1984.
Missouri: MO83-4047	June 24, 1983.
New Hampshire: NH83-3011	May 13, 1983.
New Jersey:	
NJ83-3015	June 17, 1983.
NJ83-3016	June 17, 1983.
New Mexico: NM83-4071	Oct. 7, 1983.
Pennsylvania:	
PA79-3020	July 20, 1979.
PA81-3076	Oct. 9, 1981.
PA81-3080	Oct. 23, 1981.
PA81-3068	Sept. 25, 1981.
PA82-3016	May 14, 1982.
PA84-3001	Feb. 10, 1984.
Tennessee: TN83-1087	Nov. 25, 1983.
Virginia: VA81-3015	Mar. 6, 1981.

Supersedeas Decisions to General Wage
Determination Decisions

The members of the decisions being superseded and their dates of publication in the *Federal Register* are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Michigan: MI81-2059 (MI84-5011)	Sept. 4, 1981.
Texas: TX83-4077 (TX84-4020)	Oct. 21, 1983.

Signed at Washington, D.C. this 6th day of April 1984.

James L. Valin,
Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 2

DECISION #A283-5102 MOD#8 (48 FR 9424-March 4, 1983) Maricopa County, Arizona	Basic Hourly Rates	Fringe Benefits	Change: Asbestos Workers
	\$13.00	\$3.33	
DECISION: #A283-5105 MOD#5 (48 FR 9426-March 4, 1983) Pima County, Arizona			Change: Asbestos Workers
	13.00	3.33	
DECISION NO. DE82-3015 - MOD. #11 (47 FR 24526 - June 4, 1982) State of Delaware	Basic Hourly Rates	Fringe Benefits	
CHANCE: ROOFERS: Shingle, Slate, or Tile Mechanic II (For shingle, Slate, or Tile) -handles and transports all materials, tools and equipment; clean-up debris All other work Mechanic II (for all other work) - handles and transports all materials, tools and equipment; clean-up debris	13.65 6.25 18.17	2.10 2.10 2.73 +j	
	8.25	2.73 +j	
DECISION #1181-2004 -MOD#4 (46 FR 16818-March 13, 1981) Illinois, Indiana, Kentucky Ohio and West Virginia	Basic Hourly Rates	Fringe Benefits	Change: Area 1 Within the geographical jurisdiction of the St. Louis District, Corps of Engineers, Mechanic and Boatman Oiler Area 2 Within the geographical jurisdiction of the Louisville District, Corps of Engineers Levermen, Engineers Mechanic, and Boatman Oiler Area 3 Within the geographical jurisdiction of the Huntington District Corps of Engineers Levermen, Engineer, Mechanic, and Boatman Oiler
	\$15.88 13.17	\$3.36 3.36	
DECISION NO. KY84-1007 Mod # 1 (49 FR 9999 - March 16, 1984) Hardin, Jefferson & Meade Counties, Kentucky	Basic Hourly Rates	Fringe Benefits	CHANGE: ELECTRICIANS
	\$16.44	1.25 - 13%	
DECISION #CA83-5119-MOD#2 (48 FR 41702-September 16, 1983) San Diego, California	Basic Hourly Rates	Fringe Benefits	Change: Asbestos Workers Electricians Cable Splicers Utility Technician Sound Installers Laborers: Group 1 Group 2 Tunnel Laborers, Group 1 Group 2 Group 3 Line Construction: Groundman Lineman Cable Splicers POWER EQUIPMENT OPERATORS: Dredging (Hydraulic Section Dredge) and Clamshell Dredges: Change Fringe Benefits to read \$7.05. B.H.R. to remain the same. Sheet Metal Workers DELETE: Parking lot work and/or Highway Markers: Traffic Delineating Device Applicator Wheel Stop Installer; Stripper; Sandblaster Slurry Seal Operation: Traffic Surface Protective Coating Applicator Mixer Operator Squeegee Man; Applicator Operator; Shuttleman Top Man
	\$21.54 23.15 23.60 16.50 16.47 13.85 14.15 14.35 14.15 14.60 17.41 22.61 22.91 20.23 13.41 12.92 13.41 12.92 11.45 9.62	\$4.92 3.78+ 3.78+ 0.47+ 1.46+ 5.72 5.72 5.72 5.72 3.65+ 4% 3.65+ 3.63+ 4.73 1.60+b 1.60+b 1.60+b 1.60+b 1.60+b 1.60+b	Add: Parking lot work and/or Highway Markers: Traffic Delineating Device Applicator Wheel Stop Installer; Stripper; Sandblaster Slurry Seal Operation: Mixer Operator Squeegee man; Applicator Operator; Shuttleman Top Man

MODIFICATIONS P. 3

DECISION NO. LA84-4003 - MOD. #1	Basic Hourly Rates	Fringe Benefits
(749 FR 3571 - 1/27/84) Jefferson, Orleans, Bossier, Caddo, Calcasieu, Beauregard, Cameron, Jefferson Davis, Allen, Plaquemines St. Bernard & St. Charles Pars., Louisiana	\$13.67	2.32
CHANGE: Bricklayer & stonemason Zones 3, 4 & 5 Painters: Zones 3, 4 & 5(Allen Par. except northeast corner): Group 1 Group 2 Group 3	16.01 14.50 18.30	.60 .60 .60
DECISION NO. LA84-4008 - MOD. #1 (749 FR 6205 - 2/17/84) Calcasieu Par., Louisiana		
CHANGE: Bricklayers/stonemasons Carpenters: Millwrights Cement masons Ironworkers Laborers Marble & terrazzo worker Plasterers Truck drivers: Pickup drivers Stake bodies, dumps, trailer trucks, winch truck & Mississippi wagon	11.01 15.46 13.42 13.10 8.00 11.01 14.20 9.10 9.18	2.32 .07 2.42 1.04 2.32 1.10 1.10
DECISION NO. LA84-4010 - MOD. #2 (749 FR 9064 - 3/9/84) Statewide Louisiana		
CHANGE: Bricklayers/stonemasons: Zone 3 Carpenters: Zone 2 - Millwrights Zone 10 - Millwrights Cement masons-Zone 2	13.67 15.46 15.46 13.42	2.32 .07 .07

DECISION NO. LA84-4010 MOD. #2 (CONT'D)	Basic Hourly Rates	Fringe Benefits
Ironworkers: Zone 6: Ironworkers erecting structural steel on bldgs 6 stories & over All other work Laborers: Zone 3 - Calcasieu Par. & Ft. Polk in Vernon Zone 4-Allen Bearegard, Cameron, Jefferson Davis & Vernon(exclud- ing Ft. Polk) Pars.	\$14.82 13.10 9.85 7.40	2.42 2.42 1.04 1.04
Zone 9: Projects \$2,000,000 & Less:	6.78 6.98 7.03 7.08 7.43	.80 .80 .80 .80 .80
Group 1 Group 2 Group 3 Group 4 Group 5 Projects over\$2,000,000:	8.11 8.31 8.36 8.41 8.76	.80 .80 .80 .80 .80
Group 1 Group 2 Group 3 Group 4 Group 5 Marble, tile & terrazzo workers & finishers: Zone 2: Marble & terrazzo workers Plasterers - Zone 3 Truck drivers: Zone 1: Calcasieu Par. & Ft. Polk in Vernon Par. Pickups, stake bod- ies,dumps,trailer trucks;winch truck Mississippi wagon Allen,Bearegard, Cameron,Jefferson Davis & Vernon(ex- cluding Ft. Polk): Pickups,stake bod- ies,dumps; trailer trucks;winch truck; Mississippi wagon	13.67 14.20 11.24 8.50	2.32 1.10 1.10

DECISION #M083-4047-MOD#4 (48 FR 29428-June 24,1983) Statewide, Missouri	Basic Hourly Rates	Fringe Benefits
CHANGE: CARPENTERS & PILEDRIVER- MEN: Zone 9 CEMENT MASONS: Zone 3 LABORERS: Zone 5: (Clay,Jackson, Platte & Ray Counties); Group I Group 2 POWER EQUIPMENT OPERATORS: Zone 1: Group I Group II Group III Group IV: (a) (b) Group V TRUCK DRIVERS: Zone 1: Group 1 Group 2 Group 3 Group 4 Group 5	\$16.05 \$2.67 15.17 2.33 12.52 3.45 13.32 3.45 14.60 4.07 14.35 4.07 13.65 4.07 9.63 4.07 12.65 4.07 14.85 4.07 13.16 4.00 13.36 4.00 13.67 4.00 13.82 4.00 12.94 4.00	

DECISION #M83-4071-MOD#7 (48 FR 45910-October 7, 1983) Statewide, New Mexico	Basic Hourly Rates	Fringe Benefits
CHANGE: Electricians: Zone IV - 4-A 4-B 4-C 4-D Cable Splicers: Zone IV - 4-A 4-B 4-C 4-D Classification Areas & Zones definition: Electricians - Cable Splicers Zone I Area I-D - anything beyond 30 miles from Area I-A	16.50 38+.84 16.95 38+.84 17.10 38+.84 17.35 38+.84 16.85 38+.84 17.30 38+.84 17.45 38+.84 17.90 38+.84 14.60 4.07 14.35 4.07 13.65 4.07 9.63 4.07 12.65 4.07 14.85 4.07 13.16 4.00 13.36 4.00 13.67 4.00 13.82 4.00 12.94 4.00	

MODIFICATIONS P. 6

DECISION NO. PA79-3020 - MOD. #14 (44 FR 42880 - July 20, 1979)	DECISION NO. PA81-3076 - MOD. #10 (46 FR 50263 - October 9, 1981)	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
Carbon, Monroe County, Including Tobyhanna Army Depot, and Pike County, Pennsylvania CHANGE: Electricians North Manheim, South Manheim, West Brunswick, Wayne, Washington, Potts- ville, Schuylkill Haven Twp.	Schuylkill County, PA. CHANGE: Electricians North Manheim, South Manheim, West Brunswick, Wayne, Washington, Potts- ville, Schuylkill Haven Twp.	18.17	2.73+ h	16.46	1.89+ 3%
ROOFERS: Zone 1 All Other Work Mechanic II (for all and transports all materials, tools and equipment; clean-up debris.	ROOFERS: All Other Work Mechanic II (for all and transports all materials, tools and equipment; clean-up debris.	8.25	2.73+ h	18.17	2.73+ e
ROOFERS: Zone 1 Shingle, Slate and Tile Mechanic II (for shin- gle, slate, or tile work) - handles and materials, tools and equipment; clean-up debris.	Shingle, Slate and Tile Mechanic II (for shin- gle, slate, or tile work) - handles and materials, tools and equipment; clean-up debris.	13.65	2.10	8.25 13.65	2.73+ e 2.10
Add: Footnote: h. Paid Holiday: Election Day.		6.25	2.10	6.25	2.10

MODIFICATIONS P. 5

DECISION NO. NJ83-3015 - MOD. #13 (48 FR 27991 - June 17, 1983)	DECISION NO. NJ83-3016 - MOD. #14 (48 FR 28003 - June 17, 1983)	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Cos., New Jersey ADD: ROOFERS: Zone 2 Shingle, Slate, or Tile MECHANIC II (For shingle, Slate, or Tile) - Handle and transport all materi- als, tools and equipment; clean-up debris	Atlantic, Burlington, Camden, Cape May, Cumber- land, Gloucester, Mercer, Monmouth, Ocean, Salem Counties, New Jersey ADD: ROOFERS: Zone 1 Shingle, Slate or Tile MECHANIC II (For Shingle, Slate, or Tile) - Handle and transport all materials, tools and equipment; clean- up debris	13.65	2.10	13.65	2.10
		6.25	2.10	6.25	2.10
DECISION NO. NH83-3011 - MOD. #1 (48 FR 21785 May 13, 1983 Rockingham and Strafford Counties, New Hampshire CHANGE: To omit Strafford County from location covered.					

MODIFICATIONS P. 8

MODIFICATIONS P. 7

DECISION NO. PA81-3080 - MOD. NO. 9 (47 FR 52078 - October 23, 1981) Lehigh County, Pennsylvania	DECISION NO. PA81-3068 - MOD. NO. 14 (46 FR 47403 - Sept. 25, 1981) Lebanon County, Pennsylvania
Change: ROOFERS: Shingle, slate, and Tile Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; clean- up debris All Other Work	Change: Remainder of County Shingle, Slate, and Tile Mechanic II (for shin- gle, slate, or tile work) handles and transports all mate- rials, tools and equipment; clean-up debris All Other Work
Basic Hourly Rates	Basic Hourly Rates
5.25 18.17	13.65
2.10 2.73 +e	2.10
8.25	6.25 18.17
2.73 +e	2.10 2.73 +e
DECISION NO. PA82-3016 - MOD. NO. 6 (47 FR 20990 - May 14, 1982) Northampton County, Pennsylvania	DECISION NO. PA84-3001 - MOD. #1 (49 FR 5294 - February 10, 1984) Berks County, Pennsylvania
Change: Roofers: Shingle, Slate, and Tile Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; clean- up debris All Other Work	Change: Electricians: Remainder of County Roofers: Shingle, Slate, and Tile Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; clean-up debris All Other Work
Basic Hourly Rates	Basic Hourly Rates
13.65	16.46
2.10	1.89 +3%
6.25 18.17	13.65
2.10 2.73 +c	2.10
8.25	6.25 18.17
2.73 +c	2.10 2.73+d

DECISION NO. PA81-3015 - MOD. #17 (46 FR 15666-MARCH 6, 1981) RADFORD ARMY AMMUNITION PLANT, VIRGINIA	DECISION NO. PA83-1087 MOD #3 (48 FR 53270 - November 25, 1983) Hamilton, Marion, Polk & Rhea Counties, Tennessee
CHANGE: PAINTERS: BRUSH SPRAY	CHANGE: IRONWORKERS
Basic Hourly Rates	Basic Hourly Rates
\$10.15 10.55	\$13.06
1.15 1.15	2.40
CLASSIFICATION DEFINITIONS POWER EQUIPMENT OPERATORS: GROUP A: Delete - engines used in connection with hoists material Add - engines used in connection with hoist material with an attach- ed device on tower or engine; hi-lifts or end loaders; finish graders on bluetop; trenching machines, concrete pumping machines GROUP B: Delete - concrete pumps; forklifts (8' lift or under) Add - forklifts; side- winders (concrete deliv- ery/distribution vehicle) GROUP C: Delete - mixers (over 2 bags, not to include central plants) Add - mixers (not over 2 bags, not to include central plants); greaser	CLASSIFICATION DEFINITIONS POWER EQUIPMENT OPERATORS: GROUP A: Delete - engines used in connection with hoists material Add - engines used in connection with hoist material with an attach- ed device on tower or engine; hi-lifts or end loaders; finish graders on bluetop; trenching machines, concrete pumping machines GROUP B: Delete - concrete pumps; forklifts (8' lift or under) Add - forklifts; side- winders (concrete deliv- ery/distribution vehicle) GROUP C: Delete - mixers (over 2 bags, not to include central plants) Add - mixers (not over 2 bags, not to include central plants); greaser

SUPERSEDEAS DECISION

STATE: MICHIGAN
 COUNTY: KENT
 DECISION NUMBER: M184-5011
 DATE: Date of Publication
 Supersedes Decision Number M181-2059, dated September 4, 1981, in 46 FR 44641
 DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - consisting of single family homes and apartments up to and including four stories.

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	\$11.18	
CARPENTERS	7.72	
CEMENT MASONS	10.77	
DRYWALL HANGERS & TAPERS	10.75	
ELECTRICIANS	9.37	
FORM SETTERS	8.00	
GLAZIERS	9.36	
LABORERS:		
General	7.01	
Landscape	5.21	
PAINTERS	8.32	
PLUMBERS & PIPEFITTERS	10.00	
POWER EQUIPMENT OPERATORS:	10.22	
Backhoe	9.13	
Bulldozer	9.20	
Crane	9.25	
Front end loader	7.61	
ROOFERS	8.32	
SHEET METAL WORKERS	10.03	
SOFT FLOOR & CARPET		
LAYERS	7.91	
TILE SETTERS	11.25	
TRUCK DRIVERS	8.12	
WELDERS - Rate prescribed for craft performing operation to which welding is incidental.		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).		

STATE: Texas
 COUNTY: Galveston & Harris
 DECISION NO.: TX84-4020
 DATE: Date of Publication
 Supersedes Decision No. TX83-4077, dated October 21, 1983 in 48 FR 48908.
 DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current highway general wage determination for Paving & Utilities Incidental to Building Construction for Galveston (excluding Galveston Island) & Harris Cos.) (DOES NOT APPLY TO ANY WORK ON TREATMENT PLANT SITES IN HARRIS CO.)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	\$18.19	\$3.23
BOILERMAKERS	16.40	2.645
BRICKLAYERS & STONEMASONS	16.45	2.25
CARPENTERS:		
Carpenters	16.10	2.42
Piledrivermen	16.10	2.42
Millwrights	16.485	2.42
CEMENT MASONS:		
Galveston County	15.85	2.05
Harris County	15.80	2.13
ELECTRICIANS:		
Galveston County:		
Electricians	17.98	1.60
Cable Splicers	18.98	+12%
Technicians - performs calibration, loop check, and/or function test of process instrumentation equipment and/or systems on petro-chemical processing plants and/or related storage facilities or utility power-house installations and/or related fuel processing facilities		+12%
Harris County	18.98	1.60
ELEVATOR CONSTRUCTORS:		
Mechanics	17.98	+12%
Helpers		+12%
Helpers (Prob.)		
GLAZIERS	16.85	3.00*a
IRONWORKERS	70%JR	3.00*a
LABORERS:	50%JR	
GROUP 1 - Unskilled laborers	13.39	1.575
GROUP 2 - All other laborers	13.14	3.50
LATHERS (Harris Co. Only)	6.00	1.94
	10.00	1.94
	15.82	1.08

LINE CONSTRUCTION:
 ZONE 1 - Galveston Co. & that part of Harris Co. from Loop 610 east to State Hwy. 59, north on State Hwy. 59, Hwy. 1960 west on Hwy. 1960 to Hwy. 6, south on Hwy. 6 to State Hwy. 59, southeast on State Hwy. 59 to Loop 610 around Loop 610 to State Hwy. 59 North: Linemen & Cable Groundman
 ZONE 2 - Remainder of Harris Co.: Linemen & Cable Splicer Groundman
 MARBLE, TILE & TERRAZZO WORKERS: Galveston Co. Harris Co.
 MARBLE, TILE & TERRAZZO FINISHERS
 PAINTERS:
 East Harris County:
 GROUP 1 - All brush, hand tinning & all other work other than that below
 GROUP 2 - All pneumatic & elec. tools & steam cleaning
 GROUP 3 - All tape & float on drywall
 GROUP 4 - All paper & vinyl hanging
 GROUP 5 - All spray, sandblasting & water-blasting
 GROUP 6 - Steeple jack work, hot materials

Basic Hourly Rates	Fringe Benefits
\$18.88	.80+3%
10.95	.80+3%
18.48	.80+3%
10.72	.80+3%
15.41	1.75
16.42	1.75
9.70	1.05
18.33	
18.685	
18.425	
18.58	
18.725	
18.99	

PAGE 3

DECISION NO.: TX84-4020

PAGE 2

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PAINTERS (CONT'D):

Remainder of Harris Co.

GROUP 1 - All brush,

hand roller, steam

cleaning, all pneumatic

tools

GROUP 2 - All spray,

sandblasting, water-

blasting

GROUP 3 - Tape, float &

drywall

GROUP 4 - Steeple jack

work, hot materials

Galveston County:

GROUP 1 - Painters on

new work

GROUP 2 - Painters on

swinging stage work or

using materials injuri-

ous to the skin

GROUP 3 - Painters on

rework & repaint

PIPEFITTERS

PLASTERERS

PLUMBERS

ROOFERS:

Composition

Slate & tile

Kettlemen

Basic Hourly Rates	Fringe Benefits
\$15.535	2.725
15.91	2.725
15.66	2.725
16.16	2.725
14.945	3.20
15.195	3.20
14.19	3.20
18.25	2.53
16.55	1.94
19.72	1.75
13.86	2.08
14.61	2.08
12.90	2.08

SHEET METAL WORKERS

SOFT FLOOR LAYERS

SPRINKLER FITTERS

TRUCK DRIVERS:

GROUP 1 - Under 14 tons

GROUP 2 - 14 thru 24

tons; dump less 7 yds.

GROUP 3 - Over 24 tons

GROUP 1

GROUP 2

GROUP 3

GROUP 4

POWER EQUIPMENT OPERATORS:

GROUP 1

GROUP 2

GROUP 3

GROUP 4

WELDERS: Receive rate prescribed for

craft performing operation to which

welding is incidental.

Unlisted classifications needed for work

not included within the scope of the

classifications listed may be added

after award only as provided in the

labor standards contract clauses (29

CFR, 5.5(a)(1)(ii)).

Basic Hourly Rates	Fringe Benefits
\$17.44	\$2.09
14.90	+38
16.17	2.06
9.82	3.23
10.18	2.40
10.37	2.40
13.80	2.40
12.22	2.54
11.69	2.54
11.51	2.54

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D):

GROUP 2 - Air compressors; blade grader, towed; flex plane; form grader; concrete

mixer, less than 14 cu. ft.; pumps; pulsmeter; truck crane driver; gasoline or

diesel driven welding machines (on 3 or more, up to 6 machines); hoist, single

drum; scraper, 3 cu. yd. or less; wagon drill; conveyor; generator gasoline or

diesel driven, over 1500 watts; rubber tired farm tractor with attachment;

a light equipment op. may run 1 or 2 150 cfm compressors

GROUP 3 - Fireman

GROUP 4 - Oiler

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS

A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day;

E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTE FOR ELEVATOR CONSTRUCTORS:

a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate. Also Seven Paid Holidays A thru G

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy duty mechanic; blade grader, self-propelled; bull clam; back filler; derrick-powered (all types); clamshell; draglines; push cat; bulldozer & all types cat tractors; cableway; backhoe; shovel, power operated; crane, power operated (all types); elevating grader, self-propelled; hoist, motor-driven, two drums or more; mixer; water well drilling machines, used on construction; building elevator, used on construction; tug boat op., assigned to construction; winch truck; locomotive crane; concrete mixer, 14 cu. ft. or more; paving mixer (all types); piledriver; scraper, heavy type, over 3 cu. yds.; trenching machine (all sizes); gradall; high-lift; foundation boring machine; gasoline or diesel-driven welding machines, 7 or more; pumpcrete machine; turnapulls; DA-10 Caterpillar, S-18 euclid & similar tractors; asphalt plant mixer on job; crusher op. on job; scoops; mobile; forklift used on construction (not including warehousing); well point pump; concrete batch plant; pneumatic rollers, self-propelled.

**Test Report
Federal Register**

Friday
April 13, 1984

Part III

**Department of
Transportation**

Federal Aviation Administration

**14 CFR Parts 91, 107, 108, 109, 121, and
135**

**Airport, Airspace, Aviation Security, and
Flight Operations Requirements; 1984
Summer Olympics, Los Angeles,
California; Final Rule and Request for
Comments**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. 23847; SFAR No. 46]

14 CFR Parts 91, 107, 108, 109, 121, and 135**Airport, Airspace, Aviation Security, and Flight Operations Requirements; 1984 Summer Olympics, Los Angeles, California****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; request for comments.

SUMMARY: This Special Federal Aviation Regulation (SFAR) is applicable for the period July 14, 1984, to August 26, 1984. It establishes airport, airspace, aviation security, and flight operation requirements for the XXIII Olympic Games to be held primarily in the vicinity of Los Angeles, California, in the summer of 1984. The rule places restrictions on scheduled operations at Los Angeles International Airport and on certain unscheduled flights into selected major airports in southern California. In addition, this rule announces other FAA services, including the provision of air commerce and aviation security information which will be available to the national and international air commerce community during the Olympic period. This rule will terminate on August 26, 1984.

DATES: Effective Date: July 14, 1984. This rule will terminate on August 26, 1984.

Comment Date: Comments concerning provisions of this regulation must be submitted by May 16, 1984.

ADDRESSES: Send comments on the rule in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204, Docket No. 23847), 800 Independence Avenue, SW., Washington, D.C. 20591, United States of America. Comments may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Office of the Associate Administrator for Air Traffic, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in this regulatory action by submitting such written data, views, or arguments, as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the above specified address. All communications received on or before the closing date for comments will be considered by the Administrator. Commenters who wish the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is written: "Comments to Docket Number 23847." The postcard will be date/time stamped and returned to the commenter. The provisions in this rule may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for the comments, in the Rules Docket for examination by interested persons. A report summarizing substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number.

Background

On November 25, 1983, the FAA published a Notice of Proposed Rulemaking (Notice 83-18) (48 FR 53374) proposing a Special Federal Aviation Regulation for the period July 14 to August 26, 1984, to establish airport, airspace, aviation security, and flight operations requirements for the XXIII Olympic Games. The major provisions proposed included—

(a) An advance airport reservation system applicable to scheduled operations of U.S. air carriers and commercial operators at identified Olympic Reservation Airports.

(b) A separate airport reservation system for U.S. unscheduled operations at the same airports with the option to add, delete, or change the category of airports.

(c) Flight plan filing requirements applicable to unscheduled U.S. and all foreign instrument flight rule or visual flight rule flights to or from an Olympic Reservation Airport.

(d) Air commerce security provisions pertaining to aircraft and airport

operators at identified Olympic Security Airports.

(e) The prohibition of most unscheduled operations at the Los Angeles International and Ontario Airports during the Olympic period.

(f) A notice requirement applicable to all foreign scheduled and unscheduled arrival flights to an identified Olympic Reservation Airport.

(g) Prohibition of airborne filing of flight plans in the Los Angeles Olympic Area.

In addition to the above, the proposal contained general provisions which—

(a) Identified the Los Angeles Olympic Area as the airspace within an 80 nautical mile radius of the Los Angeles International Airport.

(b) Identified specific Olympic reservation and security airports.

(c) Would have required pilot familiarity with appropriately issued Notices to Airmen (NOTAM's).

(d) Provided the authority for appropriate officials of the FAA to take air traffic control, security, and flight schedule reduction actions if necessary.

In recognition of a high degree of interest in the proposal, the FAA held a public meeting on December 14, 1983, in Los Angeles. Over 200 persons attended the meeting, at which 20 speakers made statements representing various interests. The interests represented were—

(a) Scheduled airlines.

(b) Unscheduled (general aviation) operators.

(c) On-demand air taxis and commuters.

(d) Business and Corporate fixed-wing operators.

(e) Commercial and business helicopter operators.

(f) Aviation service organizations and fixed-base operators.

(g) Banks.

(h) Media (television networks and stations).

(i) Los Angeles Visitors Convention Bureau.

(j) New commuter and air carrier operators and employees.

(k) Airport Operators.

Other interested parties, including banner towing operations, the Goodyear Blimp, and the U.S. Forest Service were also represented at the meeting.

In addition to the public hearing, written comments were invited. The proposed SFAR provided for a 45-day comment period ending January 12, 1984. A total of 128 written comments were received.

A summary of comments in each major area is provided below, along

with the FAA's response to those comments:

The Advance Airport Reservation System

The NPRM proposed an advance Airport Reservation System (ARS) at the following airports:

Burbank-Glendale-Pasadena—(BUR)
Los Angeles International—(LAX)
Las Vegas—(LAS)
Long Beach—(LGB)
Ontario International—(ONT)
San Diego International—(SAN)
Santa Ana (John Wayne/Orange County)—(SNA)

The proposed rule would have limited the number of scheduled operations, at reservation airports other than LAX, to a base number established by a carrier's operations during a base week prior to the Olympic Period. Operations at LAX were to be limited to those allowed under SFAR 44-5. Additional slots at all reservation airports including LAX, were to be allocated on the basis of a random drawing, until the number of slots matched Air Traffic Control (ATC) capacity at those airports.

Commenting on the advance airport reservation system, the Air Transport Association (ATA) stated that the major airlines have shown no intent to significantly alter or reschedule flight operations during the Olympic period. ATA contended that neither the current SFAR-44 allocations nor an Olympic airport reservation system were needed. Referring to traffic data from previous games in Montreal, ATA pointed out that scheduled airline traffic increased there at most by 10 percent. Further, the ATA contended that the airlines would undertake other initiatives to meet Olympic air traffic demand. Those initiatives included raising the passenger load factor from 65 to 80 percent and substituting larger aircraft in the schedule. Another factor cited as increasing capacity was the 750 million dollar airport improvement project at Los Angeles. Existing noise and traffic constraints at Burbank-Glendale-Pasadena (BUR), Long Beach (LGB), and Santa Ana (John Wayne/Orange County) (SNA) airports would limit traffic increases, according to ATA. ATA recommended an airline reservation system, to be operated by FAA's Command Center, for charters, extra sections, and certain ferry flights. It also recommended a regionally administered general aviation reservation system for both general aviation (GA) and on-demand air taxis in the southern California area and further suggested that these operations be limited at LAX and ONT based on pre-Olympic traffic. Several airlines, the

Los Angeles Visitors Convention Bureau, and airport operators including those representing Los Angeles, Long Beach, Las Vegas, and Santa Ana (John Wayne/Orange County) airports generally supported ATA's position that the air traffic increase would, at most, be moderate.

This rule modifies the proposal to require advance airport reservations for scheduled carriers and commercial operators only at LAX and only for arrival operations. The restriction is the minimum regulation necessary to ensure the safe and orderly movement of air traffic in keeping with the policies set forth in Executive Order 12291. The removal of the other airports from the advance airport reservation requirements primarily reflects the commenters' estimates that scheduled traffic into those airports would not increase enough to exceed ATC capacity. If necessary, capacity controls at airports, other than LAX which are affected by Olympic traffic, will be exercised through ATC flow control management procedures.

Air carrier arrival reservations at LAX are currently established under the procedures of SFAR 44-5. To ensure that traffic does not exceed capacity limits at LAX, the reservation procedures of SFAR 44-5 shall remain in effect for that airport until July 14, 1984. On that date, when Runway 25L will reopen, there will be additional capacity available for operations at LAX. It should be noted that SFAR 44-5 and the ARS apply to arrivals only. Between July 14 and August 26, 1984, only operators with slots obtained under SFAR 44-5 or under the Olympic SFAR will be able to operate scheduled arrivals at LAX. By August 26, 1984, slot restrictions will be eliminated at LAX.

Los Angeles International Airport is one of the busier air carrier airports in the nation, ranking in the top five in terms of air carrier and total operations. Figures presented by ATA at the public meeting reflected the average traffic levels for the 1983 Thanksgiving holiday period. Since that time, the FAA has allocated additional slots, effective January 1, 1984, to raise the level up to the engineered performance standard (EPS) of 104 operations per hour. Under this SFAR, additional slots, up to a standard of 114 per hour, will be allocated at the completion of the construction activity on Runway 25L. Thus, at the time of the Olympics, the number of slots allowed at LAX will be significantly greater than it was at the time of the ATA survey. LAX is the primary arrival airport for the Olympic Games and will undoubtedly experience an increase in traffic during the

Olympics. That fact, combined with the unsatisfied demand for access to LAX evidenced in the slot allocation proceedings, mandates that the FAA hold the number of slots at the maximum number provided by the engineered performance standard. If ATA is correct that the scheduled traffic will not reach the limits of the ATC system, more capacity will be available for unscheduled operations.

The need for the continuation of a slot allocation process was demonstrated at the slot allocation meeting in October of 1983. At that meeting, all available slots were taken before the end of the first round. This left many carriers with unfulfilled requests, some of which were substantial. The number of spillover requests for additional LAX slots is estimated to be at least 200 per day. While these scheduled operations may not be related to the Olympics, the agency believes that the demand to operate at LAX exceeds available capacity. The agency must ensure that some capacity exists for Olympic operations and that the airport is available for expected Olympic activity. The FAA will schedule a slot allocation session for the additional LAX capacity as soon as practicable after publication of this rule. If the results of that session indicate that demand will not exceed the available capacity at LAX, the requirements of this SFAR and SFAR 44-5 may be adjusted or eliminated.

Allocation of Additional Capacity

The SFAR allocates additional capacity in the following manner:

1. A random drawing will be held for U.S. scheduled air carriers and commercial operators interested in additional arrival slots for Los Angeles International Airport during the reservation period. At this drawing, the numerical order in which carrier representatives will select slots will be established. A separate message will be sent to all carriers and interested parties presently included in the mailing list established under SFAR 44 regarding the date of the random drawing. The location will be in the FAA Auditorium, 800 Independence Avenue, S.W., Washington, D.C.

2. Representatives of air carriers and commercial operators participating in the random draw will be notified of a slot allocation session to be held on a date to be announced. At this session, they may choose arrival slots from the available capacity. A message will be sent to each air carrier and commercial operator participating in the random drawing and any additional parties that notify the FAA/APO-1 that they wish to

participate. The message will state the specific date, time, and location for the slot allocation session. This session is planned for a location in the vicinity of the Los Angeles International Airport.

3. At the slot allocation session, each operator's representative may choose two arrival slots during their turn. The slots available will be listed by day and by hour for LAX. Slot demands vary from a carrier that needs a weekly arrival slot for daily service at LAX to charter and other carriers or commercial operators that need only a specific day reservation. Based on input received, the greatest demand is for full slots (those that can be used for daily service), therefore approximately 90 percent of the additional capacity in any hour will be available for selection by carriers as full slots.

4. The slot allocation session will continue until all available capacity is selected or until the operators no longer desire to select the remaining slots.

5. Arrival slots not selected during the slot allocation session will be available on a first-come first-served basis from FAA/APO-1 from the day following the session until July 1, 1984. Requests for reservations made on July 1, 1984, and thereafter must be made to the Olympic Reservation Service. Requests for slots must be in writing to the address as specified in paragraph A-7 of Appendix 1 of this SFAR. The slot requests should be listed in order of priority with no more than two slots in each request. If capacity is not available for all requests, priority consideration will be given to the request received first in FAA/APO-1.

6. No trade or exchange of slots at the reservation airports will be accepted after July 1, 1984, because of administrative workload.

The Olympic Reservation System (Unscheduled Operations)

The proposed rule would have prohibited most unscheduled U.S. operations at LAX and ONT. Twenty-five (25) commenters opposed any prohibition of unscheduled operations at LAX/ONT. Most said that it established an unwarranted and dangerous precedent and was discriminatory to general aviation. Most said that the FAA had, in the past, always attempted to fairly apportion available system and airport capacity under constrained conditions to all categories of users. The National Business Aircraft Association (NBAA) and several members of the corporate business community that regularly use LAX and ONT airports said that if any apportionment of capacity were necessary, general aviation would be willing to share in

that capacity according to its historical percentage of use of those airports.

Opposition also came from other sources, including a few fixed-base operators. AirResearch Aviation Company, a fixed-base operator at LAX, said it would be asked to accept inordinate hardship. The company provides fuel and maintenance service for business aircraft which it said provides 99 percent of the transient aircraft served at the facility. With a prohibition of normal corporate business traffic in and out of LAX, the company would lose 10 percent of its annual fuel and 10 percent of its annual maintenance business.

Other commenters, representing the aviation business interests at LAX, said that Los Angeles is a center of corporate business activity, and that aviation business activity must be able to carry on business as usual at LAX airport regardless of the Olympics. These commenters included the corporate business interests of General Motors, GTE, Southern Natural Gas, Upjohn, New Hampshire Ball Bearings, and Hanna Mining Co. Others said that business and general aviation contributed more than their fair share to the "national airspace" and the nation's transportation systems and were, as well, substantial contributors to the Olympics.

The proposed rule would have required all unscheduled operations at Category A and B airports to obtain a reservation. Category "A" airports were identified as LAX and ONT. Category "B" Airports under the proposed Olympic Reservation System included Burbank, Santa Ana, Long Beach, Las Vegas, and San Diego. All IFR and some VFR operations into the Category "B" airports would have required a reservation. The NPRM also listed Category "C" airports, which would only have had restrictions if unexpectedly high traffic conditions developed during the Olympics.

A number of commenters opposed the reservation system for unscheduled operations. The CBS and NBC television networks, and KHJ-TV, Los Angeles, were concerned that the requirement to obtain a reservation at Category A and B airports for unscheduled operations not later than 2 hours prior to departure would effectively negate their ability to cover late-breaking news. Many of their operations entail use of helicopters, and in many cases, owned or leased fixed-wing aircraft. Those aircraft function to cover fast-breaking stories, pick up and transport reporters to and from LAX, BUR, and Van Nuys (VNY) airports with short notice, and deliver news cassettes for use by local and network stations.

Network news representatives also advised the FAA that in some situations, a microwave "repeater" aircraft is used to cover on-the-scene, live television broadcasts.

In addition to the TV news media, several major banks in the Los Angeles area explained that they are dependent upon the use of immediate-access helicopter service to transport millions of dollars in bank drafts daily. The banks maintained that helicopter service is essential to guarantee that customer deposits are properly credited, and that bank drafts are processed, in a timely fashion to ensure maximum collection of funds, as well as payment of interest to customers. Several banks said that their transferral operations accounted for hundreds of millions of dollars. One bank indicated the overall helicopter network accounts for the daily transport of billions of dollars.

Other helicopter businesses and interests, including the Professional Helicopter Pilots Association of California generally were opposed to the 2 hour reservation requirement as it applied to helicopters. Most believed that 10-15 minute advance warning was adequate and that helicopters generally can be operated so that they are not an air traffic congestion factor. Hughes Helicopters Inc. stated that reservations for helicopters in or out of Olympic Reservation Airports were inappropriate because helicopters are routed separately from fixed-wing traffic and are in fact "a different network with nonconflicting arrival/departure routes."

In light of the comments received and the lower than anticipated estimate of increased traffic, the prohibition, reservation, and advance flight plan filing restrictions on unscheduled operations proposed in the NPRM have been considerably relaxed as follows:

1. Unscheduled operations will be permitted into LAX and ONT, subject to reservation requirements.
2. VFR operations of fixed-wing aircraft are excluded from reservation requirements at Category B airports.
3. The final rule eliminates provisions for Category "C" airports.
4. Reservations for unscheduled IFR flights are required at LAX, ONT, SNA, BUR, and LGB, but only for arrival operations. Reservations will not be required at LAS and SAN. Capacity control will be applied at those airports, if necessary, through flow control management procedures. This final rule also exempts the following types of unscheduled operations from reservation requirements:

(a) Essential military flights.

(b) Medical emergency flights (fire and rescue).

(c) Law enforcement and security flights.

(d) Flights essential to the public health and welfare.

(e) Presidential or Vice Presidential flights.

(f) All VFR helicopter flights regardless of the airport utilized.

5. The final rule deletes the 2 hour advance flight plan filing requirement.

The Olympic Reservation Service will be in operation 24 hours a day beginning 12:01 a.m., Pacific Daylight Time, July 1, 1984. Reservation requests will be accepted and approved on a first-come first-served basis. All reservation requests must be made no more than 14 days and not less than 2 hours prior to the first planned arrival time.

Advance Notice—Foreign Arrivals

For purposes of this SFAR, the term foreign arrival applies to any flight which departed from an airport outside the contiguous U.S. Advance notice must be provided by all unscheduled foreign arrivals at least 30 days in advance of intended date of arrival at an Olympic Reservation Airport during the period July 14 to August 26, 1984. The purpose of notice is to provide operating knowledge of foreign air traffic demand upon the Olympic Reservation Airports and the U.S. air traffic control system. This information, combined with knowledge of domestic air traffic movements, provides the basis of action to assure the safe, efficient, and orderly movement of all air traffic during the Olympic period. This rule will enable ATC to spread out large numbers of international operations to provide for their more efficient accommodation.

The following foreign arrival flights would require notice:

All known, but unpublished arrival flights, including cargo, charter, private, and State flights.

All foreign flights published in the June 1, 1984, OAG will be assumed by the FAA to operate, therefore, notice of those flights is not required. In this connection, flights which had an origin from an airport outside of the contiguous U.S. (e.g., Honolulu), will be based in accordance with the June 1, 1984 OAG. Notice may be submitted by mail or via aeronautical radio and telegraph facilities. Specific addresses are provided in Appendix I of this SFAR. The notice information to be provided includes the place of foreign departure, last intermediate stop, aircraft type and flight identification, date, and hour of planned arrival in Greenwich Mean Time (GMT), and destination Olympic Reservation Airport.

Airspace Restricted Areas

In response to a request from the Los Angeles Police Department, which is coordinating the Olympic security efforts of all Federal, State, and local law enforcement agencies, this rule provides the authority for the FAA to establish airspace restricted areas over Olympic village and competition sites. Flights through, into, or out of, airspace restricted areas are prohibited except for the following:

1. Olympic security flights.
2. Emergency relief flights involving the public health and welfare.
3. Law enforcement flights.
4. Flights operating on FAA-designated ingress/egress routes to and from heliports located within an airspace restricted area in compliance with established security requirements.
5. Flights operating under an FAA-approved authorization issued under authority and procedures of the SFAR.

The locations and dimensions of the airspace restricted areas will be charted for use by all pilots. Requests for access to the airspace restricted areas may be filed with the FAA, in advance, using the procedures specified in Appendix IV. Under this authority, for example, media representatives could identify aircraft that would be utilized during this period and could be approved for such operations. The procedures provide for one time authorization for multiple flights throughout the period of the SFAR.

Most of the comments concerning the airspace restricted areas came from the TV media. They were concerned with the effect of the rule on their ability to cover late breaking news with either helicopters or fixed-wing aircraft. The FAA understands and is aware of concerns expressed by the TV media. In considering those concerns, the FAA is also aware and must also consider that the security precautions undertaken in this country for the Olympics are substantial and extensive. They include some 60 Federal, State, and local government agencies whose combined objective and responsibility is to provide or the security of the XXIII Olympiad in an urban environment which is the fourth largest in the world, and in times of increasing international tensions and terrorist activity. The FAA, for its part, must assure proper preparations regarding aviation security.

The removal of flight plan and reservation requirements on VFR helicopter operations in the Olympic area, and the provisions for advanced authorization through the restricted areas, will alleviate many of the concerns expressed by the media.

Air Commerce Security

This SFAR establishes requirements to assure the safety and security of all persons and property engaged in air commerce during the Olympic period and defines the Southern California Olympic Security Area (SCOSA). The SCOSA is defined in the rule as an area of southern California south of 35° latitude and from the coastline east to 116° longitude. The requirements are applicable to operators of airports and to all air carriers, commercial operators, and pilots conducting operations at airports within the SCOSA.

Airport Security

Airports of current concern to FAA within the SCOSA have already implemented security procedures as required by FAR Part 107. No other requirements are added by this amendment.

The SFAR contains authority, as conditions warrant, to add other airports, including general aviation airports, to the list by NOTAM's issued pursuant to this SFAR.

Aircraft operators should contact airport management or airport security at airports within the SCOSA prior to or immediately upon arrival to determine normal and extraordinary security procedures in effect. In addition, operators must be aware that certain airports within the SCOSA and all other airports which may be designated by NOTAM will have a security program in effect that meets FAA requirements.

General aviation airports, although not currently subject to FAR security requirements, may have local security rules or regulations which apply. Aircraft operators are advised to contact airport management at airports located in areas of Olympic activity prior to arrival for any security requirements that may be in effect.

Air Carrier/General Aviation Security

U.S. and foreign air carriers and commercial operators operating at selected airports within the SCOSA shall continue to operate pursuant to FAA approved or other (foreign air carriers) security programs. Those operators and all others who operate in or land at selected airports within the SCOSA shall be prepared to implement security procedures specified in the SFAR and in NOTAM's issued pursuant to the SFAR. Coordination of security procedures will be between security representatives of the aircraft operator and the FAA Los Angeles Civil Aviation Security Field Office (LAX CASFO). Under the SFAR, all persons operating helicopters and fixed-wing aircraft

(regardless of number of passenger seats) must be prepared to implement procedures that are designed to prevent weapons and explosives from being carried aboard aircraft, and be prepared to implement other required security procedures as the need arises.

Reporting of Criminal or Other Acts Against Air Transportation—FAA Olympic Security Services

The FAA will operate an Olympic Security Service (FAA/OSS) to provide air commerce security services. Two toll-free numbers are available for the use of interested parties. During the period of the Olympic games, these toll-free numbers will be available on a 24-hour basis. The FAA/OSS will be available to provide and collect information relative to the following:

1. Security procedures/requirements.
2. Law enforcement coordination.
3. Intelligence (threats).
4. Criminal acts directed toward the air transportation system (hijacking, sabotage, etc.).

In addition, information pertaining to any hijacking or bomb threat incident may be relayed to the nearest air traffic control facility by aircraft.

The ATA commented that FAA-approved security programs already required by Parts 107 and 108 essentially include the specific security measures proposed in the NPRM. The SFAR accommodates these comments and distinguishes between those currently covered by security regulations and others that might be required by NOTAM to implement security procedures.

Summary—The Special Federal Aviation Regulation

A. Major Provisions

1. An advance airport reservation system applicable to U.S. scheduled air carrier and commercial arrival operations at LAX. The system includes both IFR and VFR operations.

2. An airport reservation system applicable to U.S. unscheduled operations at BUR, LAX, LGB, ONT, and SNA airports. This reservation system will apply to arrival operations with the following exceptions:

- (a) All VFR helicopter operations at all airports
- (b) All VFR fixed wing operations at Category B airports.

(Category B airports specifically identified in the SFAR are BUR, LGB, ONT, and SNA). Reservations will continue to be required for VFR fixed-wing operations at Los Angeles International, a Category A airport.

3. A flight plan filing requirement applicable to each person who conducts an unscheduled VFR fixed-wing arrival flight to Los Angeles International Airport.

4. A flight plan filing requirement applicable to each person who conducts a foreign unscheduled flight to an Olympic Reservation Airport. The responsible operator must ensure that it will be received by ATC at least 2 hours prior to the time the flight enters U.S. airspace.

5. A prohibition of airborne filing within the Los Angeles Olympic Area (defined in general provisions below). The exceptions are an emergency or a flight that is conducted wholly within airspace controlled by the ATC facility in which the destination airport is located and is authorized by ATC.

6. A 30-day advance notice requirement applicable to each foreign unscheduled arrival operation landing at an Olympic Reservation Airport.

7. Security requirements applicable to operators of airports, air carriers, commercial operators, and pilots conducting operations at selected airports within the SCOSA.

8. The establishment of 26 airspace restricted areas. The FAA will establish 24 of the airspace restricted areas over the Olympic competition sites and Olympic villages in the southern California area, one at Palo Alto, California, and one over the competition site and Olympic village at Annapolis, Maryland. Flight operations are not authorized in these areas except for the following:

- (a) Olympic security flights.
- (b) Emergency relief activity flights involving public health and welfare.
- (c) Law enforcement flights.
- (d) Flights operating on FAA-designated ingress/egress routes to and from heliports located within an airspace restricted area in compliance with established security requirements.
- (e) Flights operating under an FAA-approved authorization issued under authority and procedures of the SFAR.

B. General Provisions

In addition to the provisions above, the SFAR contains the following general provisions:

1. The Los Angeles Olympic area is defined as the airspace within an 80 nautical mile radius of the Los Angeles International Airport, and it includes airports designated in the SFAR or in NOTAM's issued under the SFAR which are located in the area.
2. The Olympic Reservation Airports are identified.
3. The SCOSA is identified.

4. Each person is required to be familiar with NOTAM's issued under authority of the SFAR if flying into or out of airports or airspace areas specified in the SFAR or NOTAM's issued under the SFAR.

5. The Associate Administrator for Air Traffic or his designee is given authorization to:

- (a) Restrict, prohibit, or permit operations at airports or terminal/en route airspace areas specifically designated in the SFAR or NOTAM's issued under the SFAR;
- (b) With regard to provisions of the SFAR and NOTAM's issued under it, exclude or give priority to essential military, medical/rescue, essential public health and welfare, Presidential/Vice Presidential, heads of state, Olympic Family, law enforcement/security, and other flights as specifically authorized;
- (c) Implement flow control management procedures; and
- (d) Establish airspace restricted areas.

6. The Associate Administrator for Air Traffic, and the Director, Office of Civil Aviation Security are provided authority to cancel or modify provisions of the SFAR or NOTAM's issued under the SFAR during the effective period of the SFAR. These actions may be taken if consistent with the safe and efficient use of airspace and the safety and security of persons and property on the ground as affected by air traffic.

7. The Associate Administrator for Policy and International Aviation is provided authority to review and, as conditions warrant, implement reductions in scheduled operations of U.S. carriers and commercial operators at LAX in accordance with air traffic capacity limits.

Other U.S. Laws and Regulations

Foreign aircraft operators should clearly understand that the proposed SFAR is in addition to other laws and regulations of the U.S. The SFAR does not waive or supersede them. When operating within the jurisdictional limits of the U.S., operators of foreign aircraft must conform with all applicable requirements of U.S. Federal, State, and local governments. In particular, aircraft operators planning flights into the U.S. must be aware of and conform to the rules and regulations established by the:

1. U.S. Civil Aeronautics Board regarding flights entering the U.S.;
2. U.S. Customs Service, Immigration and other authorities regarding customs, immigrations, health, firearms, and imports/exports;
3. U.S. Federal Aviation Administration regarding flight in or into

U.S. airspace. This includes compliance with Federal Aviation Regulations regarding operations into or within the U.S. through air defense identification zones, and compliance with general flight rules; and

4. Airport management authorities regarding use of airports and airport facilities.

Economic Evaluation

The FAA conducted a regulatory evaluation of this SFAR which is summarized below. The complete evaluation is in the public docket for inspection. The FAA invites comments on all aspects of this evaluation.

A. Identification of Proposals With Economic Impact:

Three parts of this rule would have economic impact:

1. Appendix I would limit U.S. scheduled carriers and commercial operators to the number of IFR and VFR operations per day at LAX established under SFAR 44-5 and any additional arrival operations established under this SFAR. Appendix II requires that certain U.S. unscheduled operators obtain a reservation prior to any operation into an Olympic Reservation Airport. These airports include LAX, which requires reservations for both IFR and VFR arrival operations, and BUR, LGB, ONT, and SNA, which require reservations for IFR arrival operations only. Interrelated Sections B1 and B2 would require those unscheduled operators to obtain a reservation, file and applicable flight plan, and record the reservation number in the remarks section of the flight plan.

2. Interrelated Sections B3 and B4 designed to prevent overloading of flight service stations in the Olympic area would require advance filing of foreign flight plans involving any flight originating outside of the contiguous U.S. arriving at an Olympic Reservation Airport and would forbid filing of airborne flight plans in the Los Angeles Olympic Area during the Olympic period.

3. Interrelated Sections C5 thru C7 would require airport and aircraft operators to be prepared to implement security measures at airports within the SCOSA during the Olympic period.

All other provisions of the rule would not have economic impact for various reasons. Table 1 summarizes reasons why they would not have impact.

B. Airport Reservation Requirements

1. Benefits

Elimination of unnecessary aircraft delay is the economic benefit of this interrelated set of proposals. The FAA

believes that, in most instances the airports involved can handle the expected increase in traffic during the Olympic period. However, relatively little increase in traffic at peak hours is needed to strain the capacity of the air traffic control system and cause delays nationwide. The airport reservation requirements would prevent abnormal peaking of traffic at the airports and the consequent delays.

The FAA cannot quantify the value of the delay avoided because its magnitude depends on the unknown plans of an unknown number of aircraft operators. However, the FAA ran its central flow control model to determine how much delay would result if two possible alternative conditions occurred on one day at LAX.

The first alternative condition is the addition of 25 arrivals per hour during the three peak morning hours. The model shows that this condition would result in 8,270 minutes of additional airborne and ground delays, and the FAA estimates the value of that delay, exclusive of the value of passenger time, at \$185,000. The second, more extreme, alternative condition was the addition of 20 arrivals per hour from 0700-0800. The model shows that this alternate condition would result in 60,430 minutes of additional airborne and ground delays, and the FAA estimates the value of that delay at \$1,350,000.

2. Costs

FAA estimates that a slot allocation procedure will cost about \$13,500. This equates to \$12,400 in FAA personal expenses and \$1,150 in materials and other costs.

The FAA will also incur costs to operate the Olympic Reservation Service. This cost, for the 57-day period, exclusive of overhead, will total approximately \$97,000. Every attempt will be made to detail FAA employees in the Los Angeles area to reduce per diem and travel costs. Nevertheless, some per diem and travel will probably be needed, and it should not exceed \$75,000. The installation and operation charges for 12 WATS and 2 FTS lines would total \$51,000.

System users will incur costs to participate in the slot allocation procedure. Although no data has been submitted by affected carriers, FAA estimates that all users will spend a total of \$16,800 to participate in a slot allocation procedure. This estimate is based on the assumption that each user would require a \$30,000 per year scheduler for 16 hours.

System users will also incur costs to make reservations. These costs are not cash outlays, but the value to the users

of the time spent making reservations. Valuing that time at \$20.25 an hour, FAA estimates the cost of making reservations to be at least \$86,000.

3. Comparison of Benefits and Costs

The FAA believes the benefits of the SFAR are likely to exceed the costs. FAA and user costs, which can be quantified, would be approximately \$339,000, while the benefits of avoiding even 1 day of abnormal peaking, under FAA's two alternatives, would total \$1,535,000.

4. Regulatory Flexibility Determination

An affected small entity would have to make over 2,000 arrival reservations to exceed even the lowest significant cost threshold in FAA Order 2100.14. Therefore, the FAA finds that this set of interrelated rules would not have a significant economic impact on a substantial number of small entities and regulatory flexibility analysis is not required.

C. Aviation Security Requirements

1. Benefits

The economic benefits of this rule consist of security incidents avoided. However, the FAA cannot quantify these benefits because they depend on the unknown plans of those who would perpetrate such incidents and because the concentration of aviation activity at the Olympics offers an unprecedented opportunity to perpetrate such incidents.

2. Costs

Aircraft operators who are not now required to implement security programs within the SCOSA may incur costs to implement such programs during the Olympic period and the airport operators may incur additional costs to support the aircraft operator security effort. FAA cannot quantify the costs of these requirements. Four air carriers now serve one or more of the airports in the area on a scheduled basis and are not required to screen but could be required to do so under the SFAR. In response to FAA inquiries, they estimated costs between \$5,000 and \$35,000 per screening point. The wide variance in their cost estimates is because of uncertainty whether they could share existing screening points or would have to establish new ones. An unknown number of aircraft operators who will serve airports in the area on an unscheduled basis may also incur security costs.

3. Regulatory Flexibility Determination

Because this rule actually would

require small entities to be prepared to implement security measures, FAA

believes that its cost to any given small entity would not be significant and that

a regulatory flexibility analysis is not required.

TABLE 1.—RULES WITHOUT ECONOMIC IMPACT

Rule No.	Rule summary	Reason for no impact
A1(a)	Designates airspace within an 80 nautical mile radius of LAX as Los Angeles Olympic area.	Definitional only.
A1(b)	States that other airports and airspace areas requiring restriction or prohibition of aviation activity will be designated in NOTAM's issued pursuant to this SFAR.	Provision is advisory only. Does not restrict aviation activity at other airports or in other airspace areas.
A1(c)	Designates SCOSA.	Definitional only.
A1(d)	Lists Olympic Reservation Airports.	Actual requirements are imposed on users of the airports and airport management in other sections of this SFAR.
A2	Requires persons operating into or out of areas of Olympic activity to be familiar with NOTAM's issued pursuant to this SFAR before operating into/out of specified areas of Olympic activity.	FAR 91.5, Preflight Action, already requires a pilot in command to familiarize himself with all information concerning a flight before beginning that flight.
A3	Prohibits operation of an aircraft contrary to any restriction, prohibition, or procedure specified by the Associate Administrator for Air Traffic or the Director, Civil Aviation Security.	Included in the rule for ease of enforcement. Impact is not separate from that caused by rules imposing additional requirements.
A4(a)	Associate Administrator for Air Traffic is authorized to issue additional restrictions.	Additional restrictions are not proposed at this time.
A4(b)	Establishes Airspace Restricted Areas.	Does not interfere with normal flow of traffic.
A4(c)	The Associate Administrator for Air Traffic is authorized to give priority to, or exclude, certain operators and flights from the provisions of this SFAR.	Such exclusions would have beneficial impact but are not proposed at this time.
A5	The Associate Administrator for Air Traffic, the Associate Administrator for Policy and International Aviation, and the Director, Office of Civil Aviation Security permitted to delegate authority to extent necessary.	Included in the rule for administrative convenience.
A6	Associate Administrator for Air Traffic and Director, Office of Civil Aviation Security permitted to cancel or modify provisions of the SFAR.	No additional requirements or revocations of requirements are proposed at this time.
A7	Associate Administrator for Policy and International Aviation authorized to review and implement reductions in scheduled operations and known but unpublished operations of U.S. air carrier and commercial operators as air traffic capacity requires at LAX.	No schedule adjustments are proposed at this time.
A8	Requires persons operating aircraft to or from Olympic Reservation Airports to do so in conjunction with this SFAR and NOTAM's issued pursuant to this SFAR.	Included for ease of enforcement. Does not in itself impose any additional requirements.
C1	Director, Office of Civil Aviation Security authorized to prescribe extraordinary security procedures and exempt aircraft operators and others from security regulations and procedures.	No extraordinary security measures or exemptions are proposed at this time.
C2	Persons aware of planned or actual criminal or other acts against civil aviation required to report this information to FAA/OSS.	Responsibilities citizens would report such information to law enforcement authorities anyway. This merely directs citizen reports to proper authorities.
C3	Forbids operation of an aircraft into an airport unless airport complies with security requirements specified in this SFAR and in NOTAM's issued pursuant to this SFAR.	Included for ease of enforcement. Does not in itself impose an additional requirement.
C4	Forbids aircraft operators to operate aircraft into an airport unless they comply with security requirements specified in this SFAR and in NOTAM's issued pursuant to this SFAR.	Included for ease of enforcement. Does not in itself impose any additional requirements.
Appendix II:		
A2	Categorizes Olympic Reservation Airports and permits other airports to be designated as Olympic Reservation Airports.	Does not actually impose new requirements.
A5	Permits changing the category of an airport.	No changes of category are proposed at this time.
A8	Excludes certain unscheduled operations from reservation requirements.	Reservations are not required for such flights today.

List of Subjects in 14 CFR Part 91, 121, 135, 107, 108 and 109

Aviation safety, Aircraft flight, Air traffic control, Security.

The Special Federal Aviation Regulation (SFAR)

Accordingly, Chapter I of Title 14 of the Code of Federal Regulations is amended by adding this SFAR No. 46 to Parts 91, 121, 135, 107, 108 and 109 as follows, effective July 14, 1984:

Special Federal Aviation Regulation No. 46

A. General

1. For purposes of this SFAR:

(a) The Los Angeles Olympic area is the airspace within an 80 nautical mile radius of the Los Angeles International Airport and includes the airports designated in this SFAR that are located in this area.

(b) Other airports and airspace areas associated with Olympic activity which require restriction or prohibition of

aviation activity will be designated in NOTAM's issued pursuant to this SFAR.

(c) The Southern California Olympic Security Area (SCOSA) is defined as that area of southern California south of 35° latitude and from the coastline east to 116° longitude.

(d) Airports listed below and in NOTAM's issued pursuant to this SFAR are identified as Olympic Reservation Airports:

- (1) Burbank-Glendale-Pasadena (BUR).
- (2) Los Angeles International (LAX).
- (3) Long Beach (Daugherty Field) (LGB).
- (4) Ontario International (ONT).
- (5) Santa Ana (John Wayne/Orange County) (SNA).

2. Each person shall be familiar with all Notices to Airmen (NOTAM's) issued pursuant to this SFAR and all other available information concerning that operation before conducting any operation into or out of an airport or area specified in this SFAR or in NOTAM's pursuant to this SFAR. In addition, each person operating a

foreign flight that will enter the U.S. shall be familiar with any international NOTAM's issued pursuant to this SFAR. NOTAM's are available for inspection at operating FAA Flight Service Stations.

3. Notwithstanding any provision of the Federal Aviation Regulations to the contrary, no person may operate an aircraft contrary to any restriction, prohibition, or procedure specified in this SFAR or by the Associate Administrator for Air Traffic, or the Director, Civil Aviation Security, in a NOTAM which is issued pursuant to this SFAR.

4. As conditions warrant, the Associate Administrator for Air Traffic is authorized to—

(a) Restrict, prohibit, or permit instrument flight rules and/or visual flight rules (IFR/VFR) operations at any Olympic Reservation Airport or terminal or en route airspace area designated in this SFAR or in a NOTAM issued pursuant to this SFAR.

(b) Establish airspace restricted areas over Olympic competition and Olympic

village areas for the purpose of providing security for the Olympic Games.

(c) Give priority to, or exclude, the following flights from provisions of this SFAR and NOTAM's issued pursuant to this SFAR:

- (1) Essential military.
- (2) Medical/rescue.
- (3) Essential public health and welfare flights.
- (4) Presidential/Vice Presidential flights.
- (5) Flights carrying visiting heads of state.

(6) Flights in the service of the International Olympic Committee, the International Sports Federation and the National Olympic Committees.

(7) Law enforcement/security flights.

(8) Flights authorized by the Associate Administrator for Air Traffic.

(d) Implement flow control management procedures.

5. The Associate Administrator for Air Traffic, AAT-1, the Associate Administrator for Policy and International Aviation, API-1, and the Director, Office of Civil Aviation Security, ACS-1, may delegate their authority under this regulation to the extent necessary for the safe and efficient conduct of flight operations.

6. AAT-1 and ACS-1 may issue NOTAM's during the effective period of this SFAR to cancel or modify provisions of this SFAR and NOTAM's issued pursuant to this SFAR if such action is consistent with the safe and efficient use of airspace and the safety and security of persons and property on the ground as affected by air traffic.

7. API-1 is authorized to review and, as conditions warrant, implement reductions in scheduled operations and known but unpublished operations of U.S. air carrier and commercial operators at Los Angeles International Airport.

8. No person may operate an aircraft to or from an Olympic Reservation Airport unless that person complies with the requirements of this SFAR and NOTAM's issued pursuant to this SFAR that are applicable to his/her operation.

9. No person may operate an aircraft within, into, or out of an airspace restricted area unless that person complies with the requirements of this SFAR and NOTAM's issued pursuant to this SFAR applicable to operations in those areas.

B. Flight Plan Filing

1. Each person who conducts an unscheduled instrument flight rules (IFR) or a fixed-wing visual flight rules (VFR) flight to the Los Angeles International Airport shall file an applicable flight

plan and shall obtain an Olympic reservation number from the Olympic Reservation Service (ORS) prior to filing the flight plan and record the number in the remarks section of the flight plan.

2. Each person who conducts an IFR unscheduled flight to Santa Ana (Orange County/John Wayne), Long Beach, Ontario or Burbank-Glendale-Pasadena airports shall obtain an Olympic reservation number from the ORS prior to filing the flight plan and record the number in the remarks section of the flight plan.

3. Each person who conducts a foreign unscheduled flight to an Olympic Reservation Airport shall file an IFR or VFR flight plan and shall ensure that the flight plan will be received by U.S. air traffic control (ATC) at least 2 hours prior to the time the flight enters U.S. airspace.

4. Airborne filing of an IFR or VFR flight plan is prohibited within the Los Angeles Olympic area, unless an emergency exists or the flight is conducted wholly within the airspace controlled by the air traffic facility in which the destination airport is located and is authorized by ATC.

C. Air Commerce Security

1. As conditions warrant, the Director, Office of Civil Aviation Security is authorized to—

(a) Prescribe security procedures as deemed necessary to protect persons and property in air commerce at designated airports within the SCOSA, and

(b) Exempt aircraft operators and others from security regulations and procedures required by the Federal Aviation Regulations and this SFAR or in NOTAM's issued pursuant to this SFAR.

2. Any person aware of criminal or other acts, planned or actual, against civil aviation conducted at an airport listed in this SFAR or in a NOTAM issued under this SFAR, or against a civil aircraft operating to or from those airports shall report this information to the FAA Olympic Security Service (FAA/OSS) by using the following toll-free telephone numbers:

(a) Calls made from within California (800) 732-6666; and

(b) Calls made from all States except California (800) 524-8666.

3. No person may operate at an airport in the SCOSA covered by Federal Aviation Administration (FAA) Part 107 unless the airport complies with the security requirements specified in FAR Part 107 and its FAA-approved security program or, for airports not covered by such regulations, in NOTAM's issued pursuant to this SFAR.

4. No person may operate an aircraft into an airport in the SCOSA which is covered by FAR Part 107 or required to adopt and implement a security program by NOTAM issued pursuant to this SFAR unless that person complies with the security requirements specified in FAR Part 108 and its FAA-approved security program or for persons not covered by such regulations as specified in this SFAR and in NOTAM's issued pursuant to this SFAR.

5. *Airport Security.* Each operator of an airport in the SCOSA shall assure that:

(a) If that airport is currently covered by FAR Part 107, it shall continue to be operated in accordance with its FAA-approved security program and any amendments thereto that are issued during the period of this SFAR.

(b) If that airport is not currently covered by FAR Part 107 and is subsequently notified by NOTAM's issued pursuant to this SFAR, it will adopt and implement a security program approved by FAA covering that airport. Such security program adopted pursuant to NOTAM shall be submitted to the Los Angeles Civil Aviation Security Field Office (LAX CASFO) as required by such NOTAM.

(c) All airport security procedures and security matters are coordinated with the LAX CASFO, unless a different FAA CASFO is specified for a particular airport in a NOTAM issued pursuant to this SFAR.

Note.—A sample airport security program and technical guidance regarding use of such programs are available at the LAX CASFO.

6. *Security of FAR Part 108 Certificate Holder Operations.* Each certificate holder defined in FAR Part 108 shall continue to operate to and from each airport in the SCOSA in accordance with its FAA-approved security program and any amendments issued thereto during the period of this SFAR.

7. *Security of Aircraft Operations Not Covered by FAR Part 108.* Each aircraft operator not covered by FAR Part 108 upon the issuance date of this SFAR who operates or plans to operate an aircraft, regardless of the number of passenger seats, to or from an airport within the SCOSA which is covered by FAR Part 107 or subsequently is required to adopt a security program by NOTAM issued pursuant to this SFAR, shall, during the period of this SFAR:

(a) If that operator is operating an aircraft that is carrying persons for compensation or hire, the operator shall adopt and implement a security program acceptable to FAA which meets the requirements of FAR Part 108 as

applicable to its operations. The security program shall be submitted to the LAX CASFO no later than 30 days following issuance of this SFAR, or

(b) If that operator is operating an aircraft that is not carrying persons for compensation or hire, the operator shall comply with any requirements contained in NOTAM's issued pursuant to this SFAR that are applicable to its operations.

Note.—A model security program and technical guidance regarding use of such program is available from the LAX CASFO.

Appendix I.—Airport Reservation System—U.S. Scheduled Operations

A. Advance Airport Reservations—U.S. Scheduled Operations—LAX

1. The number of arrival operations per day, per hour that a U.S. air carrier or commercial operator may operate under IFR and VFR at Los Angeles International Airport shall not exceed the number established under SFAR 44-5 and any additional arrival operations established under this SFAR.

2. The number of operations established under this appendix shall be the base operation schedule for that operator at LAX until August 26, 1984.

3. An air carrier or commercial operator who does not participate in the slot allocation session as part of the advance airport reservation service may obtain on a first-come first-served basis arrival slot reservation(s) by submitting such request in writing to the address as specified in paragraph A7 of this Appendix. Capacity available for allocation will be limited to arrival slots not selected during the slot allocation session and slot(s) made available by air carriers that do not fully utilize their base of authorized arrival(s) under SFAR 44-5. These slots may be requested from the date following the slot allocation session until July 1, 1984. Beginning July 1, 1984, slot reservations are to be requested from the FAA Olympic Reservation Service in accordance with procedures of Appendix II.

4. An air carrier or commercial operator who does not participate in the advance reservation procedure for LAX or who cannot schedule all of its flights before 15 days in advance of their operation may submit requests for reservations, including extra sections and charters to the FAA Olympic Reservation Service in accordance with the procedures set forth in Appendix II. Filing a request under Appendix II does not guarantee an arrival reservation, and the flight may not be operated unless a reservation is issued by the FAA.

5. FAA approval of scheduled operations at LAX does not relieve the aircraft operator from obtaining approval from the airport operator to land and use airport facilities, nor from adhering to airport operator requirements.

6. Strict adherence to the operational procedures contained in this SFAR and NOTAM's issued under this SFAR is essential to safe and efficient use of airspace. The Administrator will take whatever action is necessary to ensure adherence to operation

limits, including but not limited to withdrawal of previously approved slots, disqualification for participation in the program, temporary suspension of some or all slots, civil penalties, or combinations of the above.

7. All notifications to the FAA required to be submitted by this Appendix shall be in writing and shall be submitted in one of the following ways:

Mail: Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, USA. Attention: Harvey B. Safeer, APO-1 ARINC: DCAYAXD. Attention: Harvey B. Safeer, APO-1
TELEX: 892562. Attention: Harvey B. Safeer, APO-1

B. Random Drawing—Procedure

1. Each U.S. air carrier and commercial operator that desires to participate in a selection session for any additional capacity at LAX shall notify the FAA by a date to be announced. A separate message will be sent to all air carriers and commercial operators presently included in the FAA mailing list established under SFAR 44-5 stating the date, time, and location, for the random drawing. Notification shall be in writing to the address specified in paragraph A7 of this Appendix.

2. Representatives of air carriers and commercial operators need not be present at the random drawing.

3. A capsule will be prepared for each air carrier and commercial operator that has notified the FAA of its interest in obtaining additional arrival reservations.

4. All capsules will be placed in a rotating drum.

5. Capsules will be randomly pulled from the drum to determine the order of selection of the reservations.

6. The results of the random drawing for order of selection will be available in the FAA docket.

7. An air carrier or commercial operator that was not able to participate in the random drawing but wishes to participate in the slot allocation session may do so by notifying the FAA up to 72 hours in advance of the slot allocation session. Such air carrier or commercial operator will be added to the bottom of the random drawing list in the order in which the request is received in writing in FAA.

8. Trading of a slot selection position will not be permitted.

C. Allocation of Additional Capacity

1. A slot allocation session will be held on a date, time, and place to be announced. At this session, representatives of the air carriers and commercial operators participating in the slot allocation session may select arrival reservations from the capacity available at LAX. A separate message will be sent to all carriers and commercial operators participating in the random drawing and those presently included in the FAA mailing list established under SFAR 44 stating the date, time, location for the slot allocation session.

2. An air carrier or commercial operator that does not notify the FAA at least 72 hours before the allocation session of the names of

the persons that will represent it at the selection session may not be permitted to participate in the allocation session.

3. The order of selection will be determined by the random draw as specified in the random drawing procedure of this appendix.

4. Each participant will have an opportunity to choose up to two arrival slots at LAX. Slots will be designated as "full" or "daily" slots. A participant may select its slots from either category. For example, the participant with rank order Number 1 may choose from any day within the reservation period at any available hour at LAX, or, the participant may choose any of the "full time" slots for any available hour beginning July 14, 1984, at LAX.

5. The representative of a participant must indicate that he/she is present within 1 minute and make his/her selection within 5 minutes after being requested to select or they will be eliminated from the rank order of participants.

6. The selection session will continue until all available reservations have been selected or until such time as the participants who are present no longer indicate a desire for the available reservations.

7. Each reservation selected will be assigned a reservation number for FAA tracking and surveillance purposes, e.g., 714 LAX 100 for an arrival slot at LAX.

8. Air carrier and commercial operators should advise the FAA as soon as possible of any reservation(s) that have been issued to them that they will not use, so that the reservation may be made available under Appendix II.

9. In view of the short schedule reservation period, trades of reservations between operators will not be accepted after July 1, 1984.

10. Slots selected during this session shall be effective on July 14, 1984, unless the FAA notifies the operator that it is effective at an earlier date.

11. Before selection, the representative must state that it is prepared to utilize all slots selected.

Appendix II

A. Airport Reservations—U.S. Unscheduled Operations

1. A reservation is required for certain U.S. unscheduled arrival operations at any airport specifically designated as an Olympic Reservation Airport in this SFAR or in a NOTAM issued pursuant to this SFAR.

2. For purposes of designating the types of U.S. unscheduled operations requiring reservations, the Olympic Reservation Airports are categorized below:

(a) Category A

- (1) Airport: Los Angeles International (LAX)
- (2) Operations Requiring Reservations: IFR—all unscheduled arrivals; VFR—all unscheduled fixed wing arrivals.

(b) Category B

- (1) Airports: Burbank-Glendale-Pasadena (BUR) Long Beach (Daugherty Field) (LGB) Ontario International (ONT) Santa Ana (John Wayne/Orange County) (SNA)

(2) Operations requiring reservations: IFR—all unscheduled arrivals.

In addition to the airports designated in this SFAR, the FAA may designate other airports as Olympic Reservation Airports in NOTAM's issued pursuant to this SFAR which may include but are not limited to the following:

Brackett Field	McClellan-Palomar
Cable Upland	Oxnard
Camarillo	Palm Springs Municipal
Chino	Rialto Municipal
Corona Municipal	Riverside Municipal
El Monte	Riverside Rubidoux
Fullerton Municipal	San Diego International
General Wm. J. Fox	Santa Barbara Municipal
Airfield	Santa Monica Municipal
Gillespie Field	Torrance Municipal
Hawthorne Municipal	Van Nuys
Las Vegas McCarran	Whiteman
Montgomery Field	

3. For the purpose of establishing available capacity for unscheduled operations at Category B airports, the schedule of flights operated by air carriers and commercial operators on June 1, 1984, will be considered by the FAA as the base schedule of operation for that operator. As considered by the FAA, the schedules will be those which are—

- (a) Submitted to the June 1, 1984, OAG, or;
- (b) As determined by contact from the FAA regarding those air carriers and commercial operators that have scheduled flights but do not file them with the OAG.

Air Carriers and commercial operators are not required to submit schedules to the FAA.

4. The FAA/ORS will allocate reservations for unscheduled operations at the Category A and B airports.

5. If conditions warrant, NOTAM's may be issued to change the category of an airport or announce the inclusion of an airport in a category.

6. Unless otherwise required in a NOTAM issued pursuant to this SFAR, the following unscheduled operations are excluded from reservation requirements:

- (a) Essential military.
- (b) Medical emergencies—fire/rescue.
- (c) Law enforcement/security.
- (d) Flights essential to the public health and welfare.
- (e) Presidential/Vice Presidential and support flights.
- (f) All VFR helicopter operations.

7. Receipt of a reservation from the FAA does not relieve the aircraft operator from obtaining approval from the airport operator to land and use airport facilities, nor from adhering to airport operator requirements such as those pertaining to noise and curfews.

B. Airport Reservation Procedures—Unscheduled Operations

1. Period for which reservations are required: July 14, 1984, to August 28, 1984.
2. Effective Times: From 0600 Pacific Daylight Time (PDT) through 2359 PDT daily.
3. Reservation requests will be accepted and approved on a first-come first-served basis beginning 12:01 PDT July 1, 1984.
4. Reservation requests must be made no more than 14 days and not less than 2 hours prior to the first proposed arrival time.
5. Multiple reservation requests will be accepted provided the total request does not include more than three reservation airports.

C. Olympic Reservation Service—Telephone Number

To obtain a reservation at an Olympic Reservation Airport, call the Federal Aviation Administration Olympic Reservation Service (FAA/ORS) on the following special toll free telephone number: 800-451-6666.

To assure that available capacity of the system is utilized, cancellations must be called in to the ORS as soon as possible after the decision to cancel is made.

Appendix III.—Foreign Arrival Operations

A. Advanced Notice—Unscheduled Foreign Arrival Operations

Operations into the United States by foreign air carriers and commercial operators are conducted in accordance with international agreements including Annex 2 of the Convention on International Civil Aviation. However, to facilitate operations into Olympic Reservation Airports, the following applies:

1. Notice is required for any foreign unscheduled arrival operation into the United States landing at an Olympic Reservation Airport. Notice of all unscheduled operations is required, including extra sections, cargo, private, state and charter flights. For purposes of this SFAR, a foreign unscheduled arrival is any flight, which departs from an airport outside the contiguous U.S. and which is not published in the June 1, 1984, OAG.
2. Notice of arrival into the United States at an airport designated below, or in a NOTAM issued pursuant to this SFAR, shall be given to the FAA at least 30 days prior to the intended date of arrival.
3. Cancellations of intended flights into the U.S. shall be provided to the FAA as soon as possible after the decision to cancel is made.
4. The notice requirement of this SFAR is for air traffic control purposes. It does not constitute an air traffic control clearance and does not guarantee airport access, nor does it waive any other existing U.S. entry requirement. It does not waive or supersede any other notice requirement which may be applicable to flight operations regarding entry into the U.S.

B. Notice Procedures

1. Period for which Notice is Required: July 14, 1984 to August 28, 1984.
2. Effective Times: From 0600 Pacific Daylight Time (PDT) through 2359 PDT daily.
3. Airports requiring notice:
 - (i) Burbank-Glendale-Pasadena
 - (ii) Long Beach (Daugherty Field)
 - (iii) Los Angeles International
 - (iv) Ontario International
 - (v) Santa Ana (John Wayne/Orange County)

4. Notice specified in this Appendix to be given the FAA may be given in one of the following ways:

Mail: Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. USA., 20591. Attention: Harvey B. Safeer, APO-1 ARINC: DCAYAXD. Attention: Harvey B. Safeer, APO-1
TELEX: 892562. Attention Harvey B. Safeer, APO-1

5. The following information shall be provided in the notice:

- (i) Foreign departure country and airport.
- (ii) Aircraft type and flight identification number.
- (iii) Date and time of arrival at last point of landing prior to landing at Olympic Reservation Airport.
- (iv) Destination Olympic Reservation Airport.
- (v) Date/Hour (in GMT) of planned arrival at Olympic Reservation Airport.

C. Voluntary Participation—Airport Reservations

In lieu of filing advance notice of arrival at an Olympic Reservation Airport, all foreign scheduled operators are urged to voluntarily participate in the airport reservation service. Foreign scheduled operations would be included in the long-term advance reservation system; foreign unscheduled operations would be included in the reservation system for unscheduled operations. These systems are described in Appendices I and II. The intent of the advance airport reservation system is to even the scheduled demand at LAX during peak demand periods. The airport reservation system for unscheduled traffic is designed to accomplish the same objective, i.e., the balancing of the known air traffic demand to available air traffic control and airport capacity.

Appendix IV.—Airspace Restricted Areas

A. Establishment

The airspace restricted areas described in this Appendix are established over Olympic village and competition sites. These areas are established in conjunction with and in support of United States Federal, State, and local government agencies responsible for the security of the XXIII Olympiad.

Aircraft operations within, into, or out of airspace restricted areas are prohibited except for the following:

1. Olympic security flights.
2. Emergency relief flights involving the public health and welfare.
3. Law enforcement.
4. Flights operated on FAA-designated ingress/egress routes to/from heliports located within an airspace restricted area in compliance with established security requirements.
5. Flights operating under an FAA-approved authorization issued under authority and procedures of the SFAR.

For operations conducted under A4 and A5 above, an authorization must be obtained in accordance with procedures detailed under Section C of this appendix, "Access to Airspace Restricted Areas."

The FAA maintains responsibility and authority for use of the designated airspace restricted areas and will ensure that any authorization to operate within, into, or out of an airspace restricted area is issued on a nondiscriminatory basis and solely on the prevailing needs of security.

B. Description

The following describe the airspace restricted areas established under this SFAR.

Except for Palo Alto, California, and Annapolis, Maryland, the number of each airspace restricted area description coincides with the number of the description as it appears in the special edition of the Los Angeles VFR terminal area chart and also as it appears in the special edition of the Los Angeles and vicinity VFR helicopter aeronautical chart. The effective period for all airspace restricted areas is from July 14 to August 15, 1984.

Southern California

1. *University of California/Santa Barbara*—2 nautical mile (NM) radius of 34°24'30" N, 119°50'58" W, (within the Santa Barbara Airport Traffic Area). Surface to 2,500' mean sea level (MSL).
2. *Lake Casitas*—2 NM radius of 34°24'10" N, 119°20'00" W. Surface to 4,000' MSL.
3. *Rosebowl*—2 NM radius of 34°09'41" N, 118°10'00" W excluding the Ventura Freeway. Surface to 2,500' MSL.
4. *Santa Anita Park*—1 NM radius of 34°08'27" N, 118°02'38" W excluding El Monte Control Zone. Surface to 2,500' MSL.
5. *Pepperdine College*—1 NM radius 34°02'30" N, 118°32'40" W excluding coastline. Surface to 2,500' MSL.
6. *UCLA*—2 NM radius 34°04'13" N, 118°26'45" W excluding the north portion of the Santa Monica Control Zone; truncated to the west by a line (fifty feet east) from reservoir (34°02'40" N, 118°28'30" W); northeast to the Brentwood Bel Air Holiday Inn; thence, northeast from the Brentwood Bel Air Holiday Inn to the northern most point of Stone Canyon Reservoir. Surface to 2,500' MSL.
7. *Dodger Stadium*—1 NM radius 34°04'26" N, 118°14'21" W excluding the Golden State Freeway (#5), Glendale Freeway (#2), Pasadena Freeway (#11), and Hollywood Freeway (#101). Surface to 2,500' MSL.
8. *CSLA (Cal State University)*—1 NM radius of 34°04'00" N, 118°10'02" W bordering and including the intersection of the Long Beach and San Bernardino Freeways. Surface to 2,500' MSL.
9. *USC/Coliseum/Convention Center*—2 NM radius of 34°01'58" N, 118°17'27" W bordering but excluding Wilshire Blvd.; to the NE bordering and including Olive St. and 7th St.; Southbound Olive St. to the Santa Monica Freeway; thence south to Lindsey Park. Surface to 2,500' MSL.
10. *East Los Angeles College*—1 NM radius 34°02'28" N, 118°08'54" W truncated to the Northwest and South; bordering but excluding the Pomona Freeway, Long Beach Freeway and Monterey Pass Road. Surface to 2,500' MSL.
11. *Loyola Mary Mount College*—1 NM radius of 33°58'07" N, 118°24'53" W truncated to the north, bordering but not including the Marina Freeway and Los Angeles International Airport excluding Sepulveda Blvd. Surface to 2,500' MSL.
12. *Forum*—1 NM radius of 33°57'30" N, 118°20'28" W. Surface to 2,500' MSL.
13. *CSF (Cal State Fullerton)*—1 NM radius of 33°52'45" N, 117°53'00" W. Surface to 2,500' MSL.
14. *Prado (San Bernardino)*—1 NM radius 33°56'20" N, 117°39'15" W, excluding Pine Ave. Surface to 2,500' MSL.

15. *Cal State University Dominguez Hills*—2 NM radius of 33°51'55" N, 118°15'15" W excluding the Long Beach Control Zone; truncated to the north; bordering and including the eastbound lanes of the 91 Freeway. Truncated to the west and south to border but not including the Harbor and San Diego Freeways. Surface to 2,500' MSL.
16. *El Dorado Park*—1 NM by 1 NM rectangle from 33°48'30" N, 118°05'00" W. Truncated to the east to border but not including Freeway 605. Surface to 2,500' MSL.
17. *Anaheim Convention Center*—2 NM radius of 33°48'04" N, 117°55'11" W, truncated to the North to border, but not including Freeway I-5 truncated to the southeast to the border, but not including the Garden Grove Freeway. Surface to 2,500' MSL.
18. *Long Beach Convention Center*—area is a rectangle whose borders are 1/2 NM North; 1 NM South and West; 2 NM east of 33°45'53" N, 118°11'16" W; bordering but excluding the Long Beach Freeway on the West; bordering and including Belmont Pier on the east which includes the Queen Mary on the south border. Surface to 2,500' MSL.
19. *Heritage Park*—1 NM radius of 33°41'20" N, 117°46'25" W truncated to the north to border but not including Freeway I-5. Surface to 2,500' MSL.
20. *Coto De Caza*—2 NM radius of 33°39'25" N, 117°36'05" W. Surface to 2,500' MSL.
21. *Fairbanks Ranch (San Diego)*—2 NM radius of 32°58'32" N, 117°12'42" W excludes I-5 Freeway. Surface to 2,500' MSL.
22. *Mission Viejo*—1 NM radius 33°35'25" N, 117°39'25" W excludes Freeway I-5. Surface to 2,500' MSL.
23. (Site number 23 is outside Southern California, see Palo Alto below.)
24. *Mount St. Mary's College*—1 NM radius of 34°05'07" N, 118°28'53" W; truncated to the east by a line (fifty feet west) from the Brentwood Bel Air Holiday Inn Northeast to the northern most point of Stone Canyon Reservoir. Surface to 2,500' MSL.
25. *Occidental College*—1 NM radius of 34°07'30" N, 118°12'30" W excluding the Glendale Freeway. Surface to 2,500' MSL.

Palo Alto, California

23. *Stanford University, Palo Alto*—2 NM radius of 37°25'40" N, 122°10'10" W. Surface to 2,500' MSL.

Annapolis, Maryland

- Navy-Marine Corps Stadium, Annapolis, Maryland*—2 NM radius of 38°59'00" N, 076°29'20" W. Surface to 2,500' MSL.

C. Access to Airspace Restricted Areas

Each person who wishes to conduct operations within, into, or out of an airspace restricted area established under this SFAR must request authorization from the FAA. The FAA will review and approve/disapprove each request. Disposition of the request will be accomplished through facilities of the Olympic Air Support Headquarters, Los Angeles, California. To request authorization, each person must:

1. Submit a completed and signed application for Certificate of Waiver or Authorization (FAA Form 7711-2) to the FAA at the following address: Commander, Olympic Air Support Headquarters, 555 E. Ramirez Street, Los Angeles, California

90012. ATTN: Captain Woods, Tele: (213) 485-2800.

2. Completion of Applications.

Applications for authorization must be completed as follows:

- (a) All items—type or print.
- (b) Items 1 through 8—Each item must be completely answered by all applicants.
3. If an FAA Form 7711-2 is not available, submit a letter request to the above address specifying as a minimum the following information:
 - (a) Name of Requesting Organization/name of person responsible.
 - (b) Mailing address/Telephone No.
 - (c) Detailed description of proposed operation.
 - (d) Area of operation—include location and altitudes.
 - (e) Beginning/ending date and times.
 - (f) Aircraft make/model, identification number, color, owner, and address of owner.
 - (g) Pilot(s) name(s), home address(es) certificate number(s).
 - (h) Signature of responsible person.
 4. Submit the application not less than 7 days in advance of the proposed operation. The requester will be notified of the disposition of the request. If granted, an FAA authorization will:
 1. Issue to an organization, if possible, in preference to an individual.
 2. Specify operations which are permitted.
 3. Specify special provisions. Special provisions will be on the reverse side of a Certificate of Waiver or Authorization (FAA Form 7711). The special provisions of authorization establish conditions and limitations under which operations may be conducted. They may include, but are not limited to:
 - (a) Locations;
 - (b) Time periods;
 - (c) Type aircraft;
 - (d) Altitudes at which or below which operations may or may not be conducted;
 - (e) Ingress/egress routes;
 - (f) Special communication/coordination procedures;
 - (g) Equipment required to operate in the area, such as navigation, communication, and transponder equipment;
 - (h) Special procedures that may be required, such as those regarding implementation of short-notice operations;
 - (i) Procedures to terminate operations, if necessary; and
 - (j) The extent to which the operation is authorized.
 4. Specify effective/expiration dates, times, including times of operation.
 5. Limit the certificate to those activities required by the operations.

D. Compliance

The holder of the Certificate of Waiver or Authorization is responsible for compliance with its provisions. It is likewise the holder's responsibility to brief all persons participating in the operation.

E. Cancellation/Termination

Failure to comply with the provisions of a certificate is cause for cancellation. A certificate may be cancelled at any time by the responsible FAA authority designated to

monitor operations within airspace restricted areas. In addition, authorization for a particular operation may be terminated if security actions by Olympic and/or law enforcement security forces become necessary to provide for the safety and security of persons and property.

(Secs. 307, 313(a), and 601, Federal Aviation Act of 1958 as amended (49 U.S.C. 1348, 1354(a) and 1421); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

Note.—For the reasons set forth in the preamble: (1) The FAA has determined that the SFAR does not involve a major rule under Executive Order 12291; and (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and I certify that under the criteria of the Regulatory Flexibility Act, this SFAR, will not have a significant economic impact on a substantial number of small entities. Since the effective time period of the SFAR is for the Olympic Period only, it will have very little impact on trade opportunities for U.S. firms doing business overseas or for foreign

firms doing business in the United States. A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket, and copy may be obtained by contacting the person identified under the caption, "FOR FURTHER INFORMATION CONTACT."

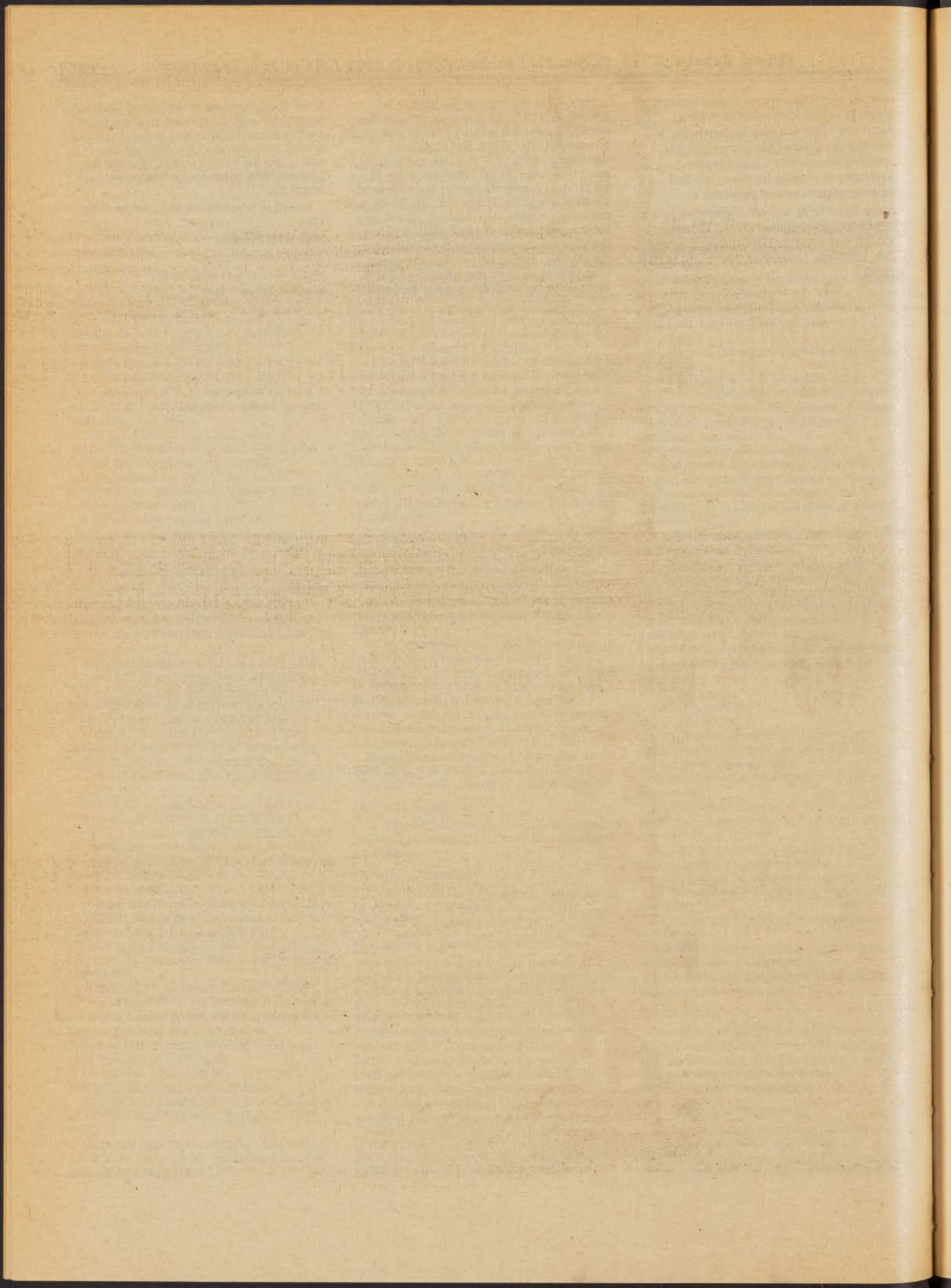
Issued in Washington, D.C., on April 6, 1984.

Michael J. Fenello,

Acting Administrator.

[FR Doc. 84-9786 Filed 4-9-84; 11:50 am]

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Federal Register

**Friday
April 13, 1984**

Part IV

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 318 and 319

**Cured Pork Products; Control of Added
Substances and Labeling Requirements;
Updating of Provisions; Final Rule**

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 319

[Docket No. 79-714F]

Control of Added Substances and Labeling Requirements for Cured Pork Products; Updating of Provisions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule modernizes the Department's regulatory program to assure that cured pork products are accurately labeled at all stages of commerce. Labeling statements will be based on the style and type of the product (e.g., boneless ham). Current standards which limit the amount of added water and other substances contained in cured pork products are replaced with standard specifying a minimum meat protein content on a fat free basis (PFF) in the various finished, cured pork products. The products are still subject to the limitation for ingredients in Part 318 of the Federal meat inspection regulations. In addition, unnecessary restrictions on optional ingredients in the standard for "chopped ham" are eliminated. This revision permits a broader range of cured pork products to be marketed, provided they meet the applicable standard and are accurately labeled. Compliance procedures to assure conformance with the proposed standards are based on contemporary statistical science applied to current processing capabilities and provide inspectors with additional support in carrying out their inspection responsibilities. Lastly, the rule provides for relabeling and/or processing requirements for products not in conformance with regulatory standards.

EFFECTIVE DATE: April 15, 1985.

The Director of the Federal Register approves the incorporation by reference of certain publications in 9 CFR 318.19 effective on April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:**Executive Order 12291**

The Administrator, Food Safety and Inspection Service, has made a determination that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on

the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department recognizes that this rule may cause difficult marketing decisions in the short term for some processors. However, it is important to note that the Department is not prohibiting the manufacture of any variety of cured pork product; it is revising existing standards and specifying labeling requirements. These revised standards are necessary because new technology has made the existing standards obsolete. Because the new rule officially recognizes products previously approved on an interim basis and provides the flexibility to produce any variety of cured pork product, the rule can be viewed as deregulatory in nature. The rule responds to changing consumer demands, new processing procedures and improved production equipment by granting industry's requests to permit the sale of a broader variety of lower protein cured pork products. The Department is not requiring or recommending these new processes or equipment, but simply recognizing that some processors may wish to use the new technology to improve control of their production process and/or change their product mix and niche in the market.

Effect on Small Entities

The Administrator has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354, because it does not prohibit the production of any cured pork products, require any equipment purchases, or involve major procedural changes. The rule only seeks to redefine the current product standards in more technically specific, measurable terms and then implement appropriate procedures to assure compliance. The rule utilizes the Department's existing authority to sample and enforce compliance in a more efficient and proficient manner.

For the reasons expressed above, the Department has concluded that the total cost of the rule applicable to all small entities collectively would essentially consist of the impact of individual marketing decisions of all small firms. Any additional minor costs which could be incurred by a minimal number of

processors are necessary to ensure that the law is equitably applied and that it effectively accomplishes its stated objectives. Further information concerning the rule's effect on small entities may be found in the Department's review of the need for a Regulatory Flexibility Analysis, which is published as an appendix to this rule.

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) authorizes the Secretary of Agriculture to administer a program which assures consumers that meat products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Consistent with that authority, on November 10, 1982, the Department published in the *Federal Register* a proposed rule titled "Control of Added Substances and Labeling Requirements for Cured Pork Products; Updating of Provisions," (47 FR 50900-50914). That proposal's primary purpose was to amend the Department's current regulations by establishing standards and labeling requirements for cured pork products based on the minimum percentage of meat protein on a fat free basis (PFF) present in the finished cured pork product, and by prescribing procedures for determining compliance with these requirements. In so doing, the current regulations which specify the amounts of added water or other substances allowed in these cured pork products would be replaced.

The comment period was to have ended on March 10, 1983; however, a notice was published in the *Federal Register* on March 4, 1983, which extended the date for receiving comments to April 25, 1983 (48 FR 9284).

There were several reasons which prompted the Department to propose changes in this area. The current standards and compliance procedures were ineffective and outmoded due to significant advances in technology over the past few years in preparing cured pork products. This ineffectiveness was the subject of a report by the Department's Inspector General which criticized the Department for not having made the necessary changes to keep in step with new technology. Furthermore, meat processors had requested the opportunity to prepare a wider variety of cured pork products containing "added water." Since some consumers have shown a preference for more moist products, it seemed prudent to make provision for their production. Finally, in connection with the settlement of an administrative proceeding (*Pacific Coast Meat Association v. USDA* (FMIA

Docket No. 33, 7/11/78)), the Department agreed to institute rulemaking "for the purpose of determining the amount of added water to be permitted in hams, including canned hams."

After carefully reviewing the current methods for enforcing standards for cured pork products the Department has determined the best solution to the problems is a general reform of the present system. One of the principal changes proposed was the promulgation of standards based on the amount of meat protein that a particular cured pork product must contain, rather than attempting to quantify the amount of added water or added substances in that product. The proposal was designed to give industry the latitude to produce a wide variety of cured pork products with differing levels of protein as long as these products were accurately and descriptively labeled so that consumers could identify them and make informed choices. The term "non-traditional" is used to refer to those cured pork products which include more water than allowed by 9 CFR 319.104(d), and/or various amounts of non-meat solids and/or non-meat protein additives.

The Department also recognizes that its compliance program can be improved. While individual establishments retain responsibility for producing cured pork products which are wholesome and not otherwise adulterated or misbranded, the Department proposed to implement strengthened regulatory procedures by providing inspectors with additional support in carrying out their inspection responsibilities through a centrally administered sampling and evaluation program. The frequency of laboratory verification of an establishment's in-plant controls would vary with the degree of the establishment's compliance with PFF standards. The decision to strengthen regulatory procedures was also in response to the specific recommendation by the Inspector General that the Department sample cured pork products either more often or in sufficient amounts to reasonably ascertain that laboratory results were representative of a lot or of the overall production. In addition, the proposal set forth the actions to be taken when the Department discovers, in the plant or in the marketplace, that a particular cured pork product is adulterated or misbranded, or plant processes are not controlled adequately to assure that regulatory requirements are being met on a continuing basis.

Comments on Proposed Rule

In response to the proposed rule, the Department received 125 comments, 16 of which were supportive. Seventy-seven of these comments were submitted by industry members, national and regional trade associations (including state groups), and suppliers of non-meat ingredients; 27 came from consumers; 7 from Congressmen; 3 from academia; 2 from state officials; 2 each from operators of laboratories servicing industry members and private consultants; 1 from the Small Business Administration; 2 from FSIS employees; and one each from a foreign government official, and an industrial union.

Supportive Comments

Sixteen commenters, several of which were representatives of a large segment of the industry, were openly supportive of the proposal. Most supporters expressed their beliefs that the proposal protects the integrity of traditional products and maintains consumer confidence in the traditional products while allowing the production of a broader variety of cured pork products. At the same time, they perceived the proposal to include an objective compliance system which promotes fair competition within the industry.

Those concerned with the integrity of traditional products agreed with the Inspector General's report on "the potential for abuse that exists with the current system." One stated that "the manipulation of added substances, through advanced processing, allows cured pork products to be manufactured in excess of 10 percent more water than the original product weight." Another believed that "because PFF is more precise than the current procedure for measuring yield, it would enable the USDA to measure the acceptability of a process with fewer analyses." By controlling the processes, the Department can better ensure the compliance of the products in the marketplace and reduce the number of abuses which occur under the current system.

Consumer confidence in traditional cured pork products has evidently been perceived, by some processors, to be declining in recent years. These perceptions appear to be correct according to the consumer comments (discussed in more detail later in this document) received in response to the proposal. The processors believe the proposal could restore the consumer's confidence in the products through the required labeling provisions and the newly designed compliance system. One believes that it would promote "more

consumer understanding and education" about cured pork products without being a regulatory burden to the industry and without hindering the developing of new products.

The compliance system also received support from commenters. It was noted to be "radical departure from existing regulations," but praised as "well designed," "statistically sound" and "reasonable." One commenter said the proposal "is a fair and equitable approach to a rather complex problem." Another believes "it also has promise of being equitably administered throughout the industry." All of this is high praise when compared to other comments received.

Because of the advantages noted above the proposal was seen to promote fair competition between similar products by establishing meat protein content as the basis for regulatory control; thereby controlling the indiscriminant use of other added substances. Some commenters stated their belief that the proposal would provide "basic standards for competitive products, regardless of the form of packaging." Others "support the Agency's attempt to eliminate unfair competition" resulting from abuses of the current compliance system. One commenter urged the Department to "put the new PFF procedure into effect as soon as possible" because they thought that the current regulations have led to "severe competitive price disadvantages which have . . . put extreme pressure on producers of quality products," which mislead consumers and hurt processors of traditional cured pork products.

These supporting comments also included concerns about the proposal. So, some recommendations were included to make it clear that not all parts of the proposal were acceptable even though they provided support. The issues raised by the commenters have been grouped into the following nine areas:

- Standards (PFF Requirements)
- Labeling
- Compliance Monitoring System
- Laboratories
- Retail Sampling/Compliance
- Imported Products
- Economics
- Implementation
- Miscellaneous

The comments related to these issues and the Department's response to each follow.

Standards (PFF Requirements)

The concerns about standards generally had to do with the use of water and its effect on product; the merits of changing to a PFF system; use of non-meat proteins; validity of the method used to establish the standards; whether or not consideration was adequate for products with more water than is currently allowed and with large quantities of solids; correctness of the standard for ham patties, and chopped, pressed, and spiced ham; the effect of processing techniques such as massaging; raw material variability; relationship of fat content; and the definition of "meat protein."

A consumer comment expressed the view that everything added to meat is an adulterant and should not be allowed. The Federal Meat Inspection Act does not give the Department authority to prohibit use of ingredients which have a legitimate functional effect and which are safe and wholesome. It does, however, give authority to the Secretary to strictly regulate the use of non-meat ingredients in processed meat products to assure that such products are not adulterated or misbranded. This is one of the principal reasons that the Department is undertaking this rulemaking.

Two other consumer concerns related to the use of water. One suggested that consumers will be deceived into accepting more water in their products and will be confused about the water content, and the second said that consumers will be paying for water. It is true that the volume of cured pork products containing water—in excess of that which occurs naturally—has grown significantly during the past 20 years. The Department has determined, however, that the regulation does not allow deception, since it establishes standards based on levels of meat protein content and consumers can be assured that the products which they purchase indeed contain such levels. The processor is prohibited from adding water or other ingredients at levels which would dilute the meat protein content of products bearing common and usual names. The familiar designation "Water Added" is characterized by a protein fat free level and is used to identify products which are currently manufactured under 9 CFR 319.104(d). Products with protein fat free levels below that specified for "Water Added" products will be regulated on a weight-gain basis. Differential labeling was a part of the proposed rule and is being retained in this rule.

The Department anticipated the possibility that some consumers might

believe that allowing water in excess of that allowed by the current regulations would permit the marketing of inferior products, and consumers would be paying pork prices for the additional "water added" in their products. Although it is not clear from the comment, the commenter inferred that the Department had not previously allowed the addition of water in processing cured pork products. However, the use of water to facilitate the curing of pork products began many years ago, and the use of water in excess of that needed for curing dates back to the early sixties when it was the subject of rulemaking. A full discussion of that matter was included in the preamble to the proposal and is not repeated herein. Suffice to say then, this is not a new innovation. It is important for consumers concerned about this matter to know that this regulation retains all the previously established rules for labeling traditional cured pork products, and prescribes new rules for certain other cured pork products. Such labeling should fully apprise consumers of differences among the various cured pork products and facilitate their decisionmaking in the marketplace.

Notwithstanding any misunderstanding the commenters may have had however, it is appropriate to briefly expand the discussion of "paying pork prices for water." There is no direct information on differential pricing of cured pork products containing various amounts of water. However, a few years ago, in conjunction with rulemaking on net weight, a study conducted by the Department provided some information concerning the prices consumers paid for chicken breasts containing varying levels of water. The situations are similar to the extent that in both the net weight case and the "water added" cured pork product case, there is a concern that consumers would be charged product prices for excess amounts of water.

One of the findings of the Department's study was that net weight differences because of the varying levels of water did not affect the real cost of the product. When the weight of water was included as part of the product weight, the per pound price of the product decreased accordingly. A casual observer can note that this price differential also occurs for cured pork products because of water content. For example, ham labeled as "Water Added" is lower in price than a ham without the "Water Added" notation, even though the per unit cost of protein may be alike.

One comment correctly recognized that the proposed minimum PFF values have a relationship to the moisture/protein ratio requirements for cured pork products established several years ago. The current system is based on the average proportion of the natural water content to the amount of protein in the raw product. The amount of natural water in the cured pork product is estimated by first determining the percent of protein and multiplying by the ratio. The resulting figure is then subtracted from the total percent water found in the cured pork product by laboratory analysis to give an estimate of the amount of "Water Added." It is not correct to infer that the Department was only concerned with water content. By publishing this regulation, the Department establishes a standard that will prevent dilution of the meat protein content (on a fat free basis) thereby maintaining the average meat protein content of cured pork products in the marketplace bearing common and usual names. Those products which fail to meet the standard must have appropriate label declarations.

Several persons commented that the PFF approach is unnecessary. Mentioned earlier were the major reasons for issuing the proposal; namely, the current standards and compliance system have become inadequate, and the industry requested opportunity to manufacture a broader variety of cured pork products. As noted in the preamble to the proposal, the Department considered leaving the present "weight-based" standards in effect. That would have resulted in labor intensive inspection, failure to use modern inspection tools, less meaningful standards, and constraining technological advances, and would have lessened the incentive to salvage valuable water-soluble protein. Moreover, the existing standards do not provide for cured pork products containing water in excess of that allowed when labeled "Water Added". As expressed, the Department agreed in 1978 to institute rulemaking in connection with such products, and this rulemaking is intended to respond to that agreement.

Several commenters believed the deductions of non-meat proteins was unnecessary. If non-meat proteins are not deducted, limits on their use would be necessary. In addition, it would likely be necessary to establish the PFF standards at higher levels since consumers would be entitled to the level of meat protein approximating that which was indigenous to the raw, unprocessed meat cut. As implied, it

would also likely be necessary to create a labeling scheme to inform consumers of the nature and levels of non-meat proteins.

One commenter stated "many traditional cured pork products contain small amounts of nitrogenous flavoring ingredients, such as hydrolyzed vegetable protein and autolyzed yeast which, like meat, contain protein, and should be included in establishing the protein fat-free percentage of the products." The implication is that some nitrogenous containing compounds are traditional curing components. The Department disagrees. The traditional curing compounds, i.e., salt, nitrates, and nitrites, are not proteinaceous components such as are hydrolyzed vegetable protein and autolyzed yeast for example; and the amounts of nitrogen contributed by nitrates and nitrites at the allowable use levels are negligible, i.e., within the limits of analytical error, and do not warrant deduction. However, there is no reason hydrolyzed vegetable protein and autolyzed yeast cannot be used as flavoring agents. If the processor has a market for products containing such ingredients, the market can be satisfied. By not allowing the incorporation of the protein from these sources into the PFF determination, potential competitive advantages which could result from their use have been removed while allowing for the satisfying of customers having personal preference for the "non-traditional" products.

Several commenters suggested the current status of autolyzed yeast and yeast extracts be maintained or a limit be placed on the amount of yeast/yeast extracts allowed. For the reasons already stated in response to the previous comments on proteinaceous substances, yeast and yeast extracts will be deducted for the total protein content to determine the indigenous meat protein content to protect the consumers' interests.

Some commenters argued that the chemical analyses for protein do not measure the quality of the protein; so, if the protein is there to meet the standard, it does not matter about the source. The implication is that the quality of the protein is not relevant. Those processors who do not add protein to their products must comply with the same standards as those who do add protein. If a given processor desires to "increase the nutritional quality" of products, the option is still available. The standards will not penalize the manufacturers who have no inclination to add protein to their products. It also does not give the processor who uses non-meat proteins a

competitive advantage in meeting the standards over other processors.

Several commenters said the minimum PFF requirements were invalid because there were too little data; data were not gathered randomly; artery pumped products were not included in the survey; values for fat and salt content were estimated rather than actual; products containing large quantities of non-meat solids were not included; products from "problem plants" were not included; and/or the PFF requirements were just too restrictive.

An important point that should preface further discussion of these concerns is that the Federal Meat Inspection Act obligates the Secretary to protect the health and welfare of consumers by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. It authorizes the Secretary to prescribe standards for products, and requires the Secretary to make such rules and regulations as are necessary for the efficient execution of the provisions of the Act. In an effort to be fair to the regulated industry while protecting the consumers' welfare with respect to standards and labeling, the Department has followed a course of making reasonable assessments of the nature and type of products in the marketplace. That was done in this case. The Department has concluded that the information gathered fairly and accurately characterizes the products subject to the rulemaking.

The Department's conclusions are based on the following considerations:

1. In the early 1970's, information was collected by representatives of the industry and the Department for the purpose of assessing the minimum PFF values proposed for certain cured pork products by the Processed Meat Products Committee of the Codex Alimentarius Commission, an internationally formed organization of which the United States is a member. That information, and minimum PFF values for hams and pork shoulders (canned), adopted by the Commission in 1978, provided an indication of the nature of those products.

2. In preparing for this rulemaking, the Department mathematically related PFF values to equivalent added substance and added water values contained in the Department's Meat and Poultry Inspection Manual. The computational procedures made allowances for: (a) The usual solids (salt, sugars, and cure) and (b) the range of fat content normally found in those products. The result of

those calculations was that the minimum PFF values for the cured pork products covered by this rulemaking would be: Ham, 20.5; ham—with natural juices, 18.5; ham—water added, 17.0; pork shoulder, 20.0; pork shoulder—with natural juices, 18.0; and pork shoulder—water added, 16.5. The calculated minimum PFF values for the various pork loin products were found to be comparable to those for the various ham products.

The above method to derive the PFF values gives assurance that the values are at a level so that a product complying with the current added water/added substance requirements will meet the appropriate PFF requirement for that product.

3. The calculated PFF standards were then empirically compared to the PFF of cured pork products as routinely sampled. The PFF of such products was determined from the analytical results of those routine samples, which were analyzed in the Department's Food Safety and Inspection Service laboratories over a 3-month period. The evaluation included approximately 1,200 sets of analytical results for water, protein, and salt in the case of products containing no water in excess of the raw unprocessed meat,¹ and included water and protein in the case of other products. Products that met the current added water/added substance requirements also met the calculated PFF requirements.

4. After the proposed standards were determined, the Department also conducted a survey of the products covered by this rule to determine within lot variability (discussed later). This study resulted in approximately 550 analyses of the type which would be done for PFF determination, i.e., the percentage of protein and fat were determined by analysis. The PFF value was calculated for each product sample analyzed.

Review of the data obtained in the four steps above and the data submitted by the commenters believing there was too little data to establish standards has revealed that the Department's data were adequate except for ham patties, and chopped, pressed, and spiced ham. Commenters requesting a more randomly established standard should note that a random survey was not needed and would have been inappropriate to establish the PFF standards. It was the purpose of the Department to establish standards

¹ When computed as prescribed in the Department's Meat and Poultry Inspection Manual.

which were approximately equivalent to those currently used.

The commenters who were concerned that artery pumped product was not considered in this rulemaking should note that the calculations for standards were based upon current standards and products as marketed. In addition, the laboratory analyses used in the comparison of the calculated standards to the PFF values of cured pork products in the marketplace presumably included artery pumped products and the comparison confirmed the standards. It should be further noted that inclusion or exclusion of artery pumped product has no relevance to establishing the PFF standard for the various cured pork products. It would have relevance, however, in designing the compliance procedures because of process variability. As discussed later, the Department has made adjustments in the compliance procedures to include a larger percentile of processors within the allowed process variability.

Those who criticized the use of estimated salt and fat contents in the calculations of PFF values are reminded that the exercise was used only to confirm the calculated standards. In addition, only the "Water Added" products required an estimation of the salt content. It is true that to calculate approximate, equivalent minimum PFF values from those results necessitated an estimate of the salt content. The estimation was based on information available through the Department's prior labeling approval system where percentages of individual ingredients are routinely shown as a part of the labeling application and based on the knowledge of the Department's technical personnel participating in the preparation of this rulemaking. That estimated salt value was 2.2 percent. The data later gathered to determine allowable within lot variability indicate that the estimated average percent salt value may have been 0.5 percent too low. Upon calculating minimum PFF values with an average percent salt content of 2.7 instead of the 2.2, the Department found the resulting PFF values were still above the values set forth in the proposal. Since the Department's effort to establish proposed PFF values did not rest on the information obtained from evaluating those routine analytical results, and since recalculating the proposed PFF values with 0.5 percent more salt did not indicate the proposed PFF requirements were too high, the Department is making no adjustments to the minimum PFF requirements as proposed for the products covered by § 319.104 except for ham patties.

The second estimate was for the average percent of fat represented in finished product. That was done by adding the percentages of protein, water, and salt, and subtracting that sum from 100. The Department concluded that any error in estimating the average percent of fat because the estimated salt value may have been 0.5 percent too low is also insignificant. Fat is not considered in determining the PFF of a product, and it is the Department's conclusion that fat content has no bearing on that PFF, but relates only to the processor's willingness to make adjustments in processing so that the quantity of curing solution introduced into raw products is relative to the amount of lean tissue present rather than the amount of total product (including fat).

It appears that the few comments stating that the minimum PFF values did not represent the products in the marketplace were referring to the "non-traditional" cured pork products which have been introduced in recent years. The Department's existing procedure for evaluating compliance does not discount the quantity of non-meat solids used, even though they dilute the quantity of protein received by the consumer; therefore, it could be to a processor's economic advantage to use relatively larger amounts of non-meat solids to increase the volume of finished products. A part of the Department's design was to establish standards which assure consumers a given percentage of protein in the lean portion of the meat when the product's labeling bears common and usual names.

It is also the Department's intention to establish PFF standards reflecting the approximate level of non-meat solids which are used in traditional cured pork products, to maintain the meaning of traditional cured pork product labeling, and to allow the continued marketing of products containing high levels of non-meat solids provided they bear descriptive labeling. This rule accomplishes these objectives.

As contended, it is true that the calculations of the standards did not take into consideration the relatively large quantities of non-meat solids and syrups used by some processors in certain products. The actual amount used varies between products and between processors, but in certain products is on the order of 10-15 percent at the present, and does not include the salt and other substances used. If non-meat solids and syrups are used in significant quantities, they usually exceed the amount of salt used and, therefore, appear ahead of salt in the

ingredients statement (which always lists ingredients in descending order of predominance on all meat and poultry labeling). It should also be noted that the salt content may be higher in "non-traditional" products than in traditional cured pork products. In such cases, additional salt may aid in masking the sweet flavor of the product. Other substances, such as flavorings, may also be necessary to enhance flavor. In addition, as all of these additional substances increase in weight, the amount of water is generally increased. Non-meat solids, additional salt, flavorings and additional water may be used when it is desirable to increase the volume of finished product, thus reducing the unit cost. This rule does not prohibit these practices, but does make it necessary that such "non-traditional" products be labeled appropriately so that consumers will be more aware of the contents of such products.

The Department recognizes that some consumers may prefer the characteristics of the "non-traditional" products such as their sweetness and higher moisture content. Processors may continue to provide those products in at least one of the following ways:

(a) Maintaining sweetness by using smaller quantities of solids with greater sweetening power,

(b) Retaining the sweetness associated with the high solids content while decreasing the amount of added water,

(c) Labeling the product as "Ham and Water Product, X% of Weight is Added Ingredients."

(Additional discussion of these "non-traditional" products follows later in this preamble.)

It is not correct to say that data from plants experiencing difficulty with compliance were excluded. As noted earlier, the calculated PFF standards were empirically compared to the PFF of 1,200 sets of analytical results from cured pork products as routinely sampled. All analyses whether in compliance or out of compliance were used to validate the PFF requirements of products. The commenters may have been confused because of the exclusion of data from a later study to determine within lot variability.

Concerns that the PFF standards were too restrictive were mostly directed at the compliance procedures, but one seemed to focus on the fact that the standards were minimums rather than averages. The commenter correctly observed that processors will have different targets for their process because of different process control capabilities. That situation is no

different than that which has occurred in the past. As far as the PFF standards being minimums, the Department has concluded that it is in the consumer's interest to establish the requirements on such a basis to assure the consumer of a given level of protein (on a fat free basis).

One comment indicated that the minimum PFF value for cured pork products labeled as "Water Added" should be 16.0 instead of the proposed 17.0. As discussed earlier, further consideration of the minimum PFF values for those products covered by 9 CFR 319.104 indicate they are valid, with noted exceptions, and, in the absence of adequate labeling, must be maintained in order to prevent dilution of the meat protein content on a fat free basis. If the PFF standard for "Water Added" product was reduced to 16.0, the standard would not be analogous to "Water Added" products in today's marketplace.

A number of comments questioned the validity of the proposed minimum PFF values for patties made from ham, shoulders, or loins, and for chopped, pressed, or spiced ham. Based on the information submitted by some of the commenters, the Department has reevaluated its own information. It appears that the minimum PFF values proposed would not represent the nature and character of those products as now marketed. A ham patty with natural juices for example, with up to 35 percent fat allowed in the starting raw ham materials, and with 10.8 percent computed added substances, mathematically equates to a PFF of approximately 17.3; and with the same fat content and 8 percent computed added substances, the equivalent PFF would be 18.1. Recognizing that the process average is likely to be closer to 10.8 percent computed added substances rather than 8 percent, and based on the information submitted, the Department's data, and the desire not to significantly alter the character of the current products, the minimum PFF values for those products are being changed as set forth below. It should also be noted that since there are no cured pork patties prepared from shoulders (picnics, butts) or loins, the consideration has been narrowed to that of ham patties. For convenience, the requirements are being codified in 9 CFR 319.105 together with chopped, pressed, and spiced ham.

While the proposal recognized that chopped, pressed, or spiced ham were products having unique composition, the minimum PFF values proposed for those products were calculated on the basis of the raw formulation and did not

adequately allow for the quantity of all ingredients that have traditionally been used in these products. Furthermore, the information submitted with the comments, along with the Department's data, bear out the claim that the proposed PFF requirements for chopped, pressed, or spiced ham were too restrictive. Therefore, the minimum PFF requirements for chopped, pressed, or spiced ham are changed as set forth below.

Product	Proposed minimum PFF percentage	Final minimum PFF percentage
"Ham Patties," "Chopped Ham," "Pressed Ham" or "Spiced Ham" (Common and usual name), with natural juices	20.0	19.5
(Common and usual name), water added	18.0	17.5
(Common and usual name), and water product—X% of weight is added ingredients	16.5	16.0
	< 16.5	< 16.0

In addition, this rule also codifies a limit on the amount of fat allowed in ham patties. This is based on a longstanding condition for approval of labeling for products prepared from ham, namely that ham portions and trimmings used to prepare such products contain no more than 35 percent fat. Since the PFF for ham patties has been lowered from that proposed, failure to codify this longstanding policy would open the door for a change in the nature and character of ham patties in the marketplace, a situation the Department is designing to prevent in establishing PFF requirements for all the cured pork products covered by the rule. This objective was clearly stated in the preamble to the proposal and indeed is the reason for lowering the PFF for ham patties in this rule. Section 319.105 has, therefore, been changed to include the 35 percent fat limitation.

Some comments requested separate standards for massaged versus nonmassaged products, while others claimed the technological advantages for massaging would be removed by the proposal. The Department has concluded that separate standards should not be established because of different processing techniques. The consumer is not in a position to either know or care whether the product is massaged or not, but deserves the same product when bearing identical labeling regardless of the processing techniques. To do otherwise could lead to deception and cause economic disparity among processors. Creating labeling requirements that might distinguish products based on processing techniques would be difficult, cause

confusion among consumers, and require extensive consumer education efforts. The Department is therefore rejecting that idea in connection with this rulemaking. With respect to the notion that technological advantages would be removed by this rule, the Department fails to understand how that is true unless massaging was used only for the purpose of attaining maximum finished product yield under the current labeling provisions, which, as the Inspector General pointed out, are inadequate to correctly inform consumers of the actual content of the products. If that is the nature of the commenters' concern, then the Department recognizes that without the appropriate labeling changes prescribed in this rule, the finished product yield of some processors will be reduced. It should be noted that processors may continue preparing products as currently prepared; hence, the continued need for massaging and its associated improvements in texture, color, binding, consistency, and moisture retention.

One commenter requested that the Department adopt the PFF values adopted by the Committee of the Codex Alimentarius Commission, or propose the PFF standards being established by this rulemaking to a Committee of the Commission for their adoption. In 1978, the Codex Alimentarius Commission adopted PFF standards for cooked, cured ham and for cooked, cured pork shoulder. As discussed in the proposal, the Department has decided not to adopt the Codex standard, but is establishing requirements based on the nature of the products currently in the U.S. marketplace. The Codex standards are lower than the PFF requirements being promulgated in this rule and would not accurately reflect the protein content of cured pork products currently produced in the United States. Thus, adoption of the Codex PFF values would lead to a lowering of the quality of cured pork products in the U.S. marketplace, and the Department has no intention of moving in that direction. Finally, the standards established in this rule will be forwarded to the Codex Alimentarius Commission for its consideration. If it is found that the standards would have merit for international use, a Committee action may be initiated.

Several commenters expressed concern that the variability of the raw meat was not adequately considered, some specifically mentioning "Pork Stress Syndrome (PSS)" which causes pork to be "Pale, Soft and Exudative (PSE)." Although PSE pork is wholesome, it has a lower water holding capacity than regular pork and, after

slaughter, exudes indigenous water. In addition, the water dissolves and carries away proteins, reducing the amount of protein and color in the meat. Since the PSE pork contains less protein than normal pork, the commenters believed that the total variability in protein content in raw materials, caused by such things as PSE pork, should have been considered in establishing the allowable variability in the proposal.

It is the Department's contention that both raw meat variability and process variability are reflected in the finished product variability as determined in the study referenced in the proposal and on file with the FSIS Hearing Clerk during the comment period. When determining allowable variability, it is not proper to collect variability data from all causes and make them additive. The Department has therefore concluded, in the absence of evidence that its variability study is invalid, that adequate consideration was given to raw meat variability when establishing the PFF standards.

The Department is aware of the PSE pork condition and recognizes the difficulty it can cause a processor. However, when it exists to any significant extent, PSE in pork can be visually recognized after the carcass is chilled. Because of the physical and chemical properties of the PSE condition, processors may sort it out and use it for specific purposes. As with other causes of raw material variability, the Department has concluded that it is appropriate for good consumer protection not to make an allowance in the standards for the PSE condition since processors can make adjustments by altering their processes for PSE pork. Although the PSE pork condition was not the basis for making a change in the allowable standard deviations for the product Groups, the commenters should pay particular attention to that portion of the discussion which is presented later in this preamble.

One comment stated that more information was needed on curing processes and how they affect PFF before implementing the regulation, and raised the question of the effect of handling and distribution practices on PFF. The Department knows of no way the PFF content of a product would be reduced by handling and distribution practices. In certain cured pork products, some loss of water could occur, but even if the lost water were included in any PFF determination, the Department would expect to find the product in compliance if the manufacturing process were in control and the process targeted for compliance.

The curing process is complex, and science and technology is evolutionary. This evolution will continue with PFF as the regulatory standard. The basic elements essential to operating within a PFF standard are well understood. The amount of curing pickle and other ingredients that can be introduced into a raw, unprocessed pork cut, e.g., ham, is relative to the amount of lean muscle tissue present. Processors are accustomed to considering those factors in meat processing systems where protein is a key component.

Because the thrust of some comments related to the expanded use of solids, principally sugars which are "non-traditional" products, it seems appropriate to address this area in a more detailed fashion.

The compliance procedures for cured pork products, as well as for other processed meat, were established at a time when the principal curing ingredients were water, salt, and sodium nitrate and nitrite. Other substances such as the sodium phosphates and sodium ascorbate (or erythorbate) came into common use later. The principal function of sodium phosphate was to decrease the amount of juices which were lost in the cooking process, while sodium ascorbate (or erythorbate) served as an antioxidant to slow the formation of rancid flavors and to expedite the curing reaction to assure a good cured color development. Although not common, some processors would add small quantities of sugar (1-2 percent) to mask some of the salt flavor and to provide a bit of sweetness. While the other substances are limited as to quantity, regulatory limits were not placed on the quantity of salt and sugar used because it was believed that too much salt or sugar would cause the finished product to be too salty or sweet for consumer taste; i.e., salt and sugar were self-limiting in their content.

With the advent of massaging and thus retention of water-soluble proteins, finished product yields over the weight of the raw, unprocessed pork immediately increased because the amount of water which could be in the finished product was proportional to the protein. In addition to salt and sugar, flavorings were introduced. Consequently, markets were developed in some geographic regions for these moist, sweeter products, even though more than 10 percent of the product consisted of sweeteners with another 4-5 percent of salt and other substances (excluding water). Some of the salt is being added for the purpose of masking sweetness—the opposite situation of years ago. All of these additives change

the character of the product so that it no longer has the organoleptic characteristics of the traditional product.

This 15 or more percent of added substances (exclusive of water) contributes to finished product yield and is not limited under existing regulations. This situation is further compounded with the advent of products containing water in excess of that allowed by regulation with the "Water Added" labeling. These "non-traditional" products are labeled to reflect only the added water content, for example, Ham with 20% Water Added. This correctly indicates that the water content is significantly greater, but it does not reflect the 15 or more percent of other substances present. Perhaps more seriously, there is the question of whether or not labeling for these products should allow consumers to distinguish them from the more traditional products, with lower amounts of added substances.

The Department did not propose that production of the "non-traditional" products cease, although one commenter felt no demand had been proven for the products. There is no doubt that a market exists for these products, and it is the Department's view that processors should be allowed to supply that market provided the products are truthfully labeled. The standards and labeling requirements provided for in this rule will meet that objective by providing safeguards against protein dilution without appropriate labeling.

Another group of commenters stated that the Department should establish various minimum PFF values for the "non-traditional" products. Presumably, that could be done but it might not be in the interest of regulatory flexibility to halt the production of such products until data were gathered, analyzed, and regulations promulgated. Such products need to be accurately labeled to prevent consumer deception as any change in the product solids content would have to be declared on the label. This rule establishes the means for differentiating between "non-traditional" products and the traditional cured pork products bearing common and usual names, and satisfies the objectives of the Department. The Department is willing to consider promulgation of more comprehensive regulations for the "non-traditional" products if petitioned for such regulations and provided with supporting arguments and data.

Several comments expressed the view that the proposed regulations would cause producers to reduce the yield of their finished products, thus incurring

financial loss. The Department is fully aware of the concerns of some in the industry with the possibility that their overall yield may decrease. While considerable discussion has already addressed the issue of product yield, and further discussion occurs later in this document concerning the possible economic impact, it must be emphasized that the principal problem with the Department's present compliance system for cured pork products is that it cannot preclude the use of non-meat solids to increase yield. In fact, the use of added solids is not monitored at all. Therefore, by careful use of process controls and good in-plant laboratories, processors now can take maximum advantage of outdated tolerances to produce "non-traditional" products characteristically different because of the increased water and non-meat solids content but which are labeled exactly the same as traditionally cured products. These products may also be sold at prices comparable to those for traditionally cured products. This results in consumer deception and economic disparity within the industry. The compliance monitoring system will reduce the potential for such consumer deception and economic disparity among producers. The production of "non-traditional" products will be permitted, but only with appropriate labeling. The consumer will then be able to make an informed choice as to the type of product to be purchased. Economic parity will be enhanced among the industry since there will be little disparity within product groups and their yield, as opposed to the current situation. This could prove especially beneficial to small processors who may not possess the resources and technology to compete with the "non-traditional" products under current standards.

Three comments related to the effect of fat content on PFF. One said that PFF requirements limit the fat content, and two stated that the higher the fat content, the easier it would be to meet the minimum PFF standards. Fat content does not affect the PFF of a product. Fat content in pork products varies, depending on such things as the breed of swine, the individual animal, the condition of the animal when marketed, and the feed the animal has eaten. Such factors are obviously beyond the processor's control. Although natural fat is removed in varying degrees during preparation, no fat may be added to these cured pork products. In selecting this regulatory approach, the Department is principally concerned in assuring that meat protein levels (found

for the most part in lean muscle tissue) are not diluted with added water or other substances, or if so diluted, that appropriate label declarations are made. As is currently the practice, natural fat content is not regulated.

With respect to the ease of meeting minimum PFF standards with cuts containing excessive fat, the Department does not find this to be true. If pickling solutions are injected in proportion to the lean portion of the cut, the protein content of the cut will not be diluted to a point of failing to meet the standards. Essentially, the processor will make adjustments so that as the fat percentage increases, the protein percentage is not reduced by the excessive injection of pickle. (In calculating PFF, the numerator decreases as the denominator decreases.)

Some commenters recommended that standards be based on a minimum protein content, but corrected for fat content, i.e., Protein Fat Corrected (PRC), and other commenters recommended that standards be based on a minimum protein in the total product. The Department considered both ideas prior to issuing the proposal, and has reconsidered them based on the comments. As earlier stated, the Department concluded that PFF most appropriately focuses on the component of primary concern, meat protein. Both PRC and minimum protein in the total product continue to focus on added substances as a part of the whole meat cut or product. PFF is less likely to exaggerate analytical error by introducing a fat multiplier into the mathematical procedure, as PRC would. PFF and PRC give similar values in the 0-30 percent fat range which is the range of interest. PFF is simpler to determine and easier to understand than PRC. Adoption of a standard based on minimum protein in the total product would necessarily include some bias against products with higher levels of naturally occurring fat. As expressed in the proposal, the Department's view is that the consumer can make judgments about fat content either visually or through brand name acceptance.

Several commented that the definition of meat protein needed clarification. This rule does not define "meat protein," but it does make clear that only the protein indigenous (naturally occurring) to the raw, unprocessed meat is to be used in determining PFF. Therefore, any protein in the finished cured pork product which is from any source other than the raw, unprocessed meat cut will not be used in determining PFF. The Department believes that consumers

buy meat as a source of animal protein, and that allowing other proteins to partially satisfy the standards would be misleading in the absence of appropriate labeling. Further, some segments of industry have abused the present compliance system by using non-meat proteins as a means of inflating analytical nitrogen levels and thus increasing yield. If this door is not closed, the Department will be perpetuating a scheme that leads to industry inequity and consumer deception.

Five commenters contended that the PFF basis would stifle innovation in new product development. The Department is not placing any prohibition on development of new and different products, and will continue to be receptive to new data when regulating such products as long as they are accurately labeled. It should be noted, however, that the Department's intent with this rulemaking is to stabilize the composition of cured products bearing established common or usual names.

One commenter requested that products labeled "Ham Loaf" be placed in the category with "Chopped, Pressed, or Spiced Ham" and made subject to this regulation. The Department believes this suggestion has merit, but decided it should be rejected since "Ham Loaf" was not part of the proposed rulemaking and those affected were not afforded an opportunity to comment. The Department would consider a separate rulemaking dealing with "Ham Loaf" should any interested party make such a request.

Two comments raised the question of this rulemaking's effect on dry cured pork products. This rulemaking does not cover dry cured pork products. Those products have different characteristics because of unique recipes and production methods and are controlled by different sections of the regulations (9 CFR 318.7 and 318.10).

Labeling

Some labeling for a limited number of products will be changed by this rule. The major concerns in this area generally had to do with the labeling for the non-traditional products, use of the term "imitation," other specific labeling changes, and the possibility of mislabeling by retailers and food service operations. The rule differs in some respects from the proposal as a result of the comments.

Several commenters objected in some manner to the proposed name for the "non-traditional" products, offering suggestions as follows: The term "product" is not descriptive and should

not be used; use labeling such as "Ham Loaf," or "Water in Ham Product" and some other descriptive name for ham with over 50 percent added water "which is no longer what we traditionally know as ham"; use the term "imitation"; and the proposed labeling contradicts the *Armour and Company v. Freeman* ruling of 1962 (*Armour and Company v. Freeman*, 304 F.2d 404, 408 (D.C. Cir.), cert. denied, 370 U.S. 920 (1962)).

The term "product" has been retained as a part of the name for those cured pork products on which a percentage declaration of added ingredients is required. The term is defined in § 301.2 (ww) of the Federal meat inspection regulations and is appropriate for the product under consideration. In an earlier rulemaking on "Standards and Labeling Requirements for Mechanically Processed (Species) Product and Products in Which It Is Used" (46 FR 39274-39352), careful consideration was given to the use of the term "product." Except in cases where the name is for a single livestock ingredient, e.g., "partially defatted pork fatty tissue," it may be necessary to use the term "product" as a part of a product name in order to indicate that it is a new or different article containing ingredients other than meat, and/or that such additional terminology is necessary to prevent confusion with similar standardized products.

To label these products as "Ham Loaf" would be misleading since the Department has approved labeling for "Ham Loaf" which essentially consists of fresh ham, 3 percent added water, flavoring, and cure. The idea of "Water in Ham Product" was offered as an alternative to the "Ham Loaf" suggestion and was considered for use, but rejected in favor of the more descriptive labeling of this rule. Regarding the request for a descriptive label for ham with more than 50 percent added water, if the finished product were over 50 percent added water, it would be necessary for the labeling to put primary emphasis on the water. Further discussion of the qualifying statement occurs below.

Two comments said the "non-traditional" product should be labeled with the term "imitation." Another comment expressed the view that the proposed labeling contradicted the *Armour and Company v. Freeman* ruling. The term "imitation" cannot be required as a result of the *Armour and Company v. Freeman* ruling. With respect to the latter, the Department does not see a contradiction. That ruling was essentially that the hind leg of a pig

(fresh ham) was not made into an imitation by the introduction of curing solution. Subsequent to that case, the Department issued prescriptive rules which described the product, and are the pattern of this rulemaking which is one of truthful and descriptive labeling for products with differing PFF contents.

Some comments indicated that the proposed labeling "(Common or Usual) and Water Product, Contains X% Water Added" was derogatory, illogical, or inaccurate, and would cause companies to stop production of products which they could not label as desired. It was not the Department's intent to make the labeling derogatory. It was intended, however, that the labeling be descriptive. The Department is obliged to do that in lieu of fanciful names because these products closely resemble products for which common and usual names have long been established. For consumer information purposes, this is mandated by the Federal Meat Inspection Act, and it is the Secretary's responsibility to fulfill obligations to consumers to assure truthful and accurate labeling. The Department does not desire to cause cessation of production of any products which are wholesome and truthfully labeled. It is recognized, however, that some processors may make a business decision to discontinue production of some products if they do not desire to conform to labeling requirements.

Processed meats are consumed in large amounts in the United States, due in large part to a strong and continuing public confidence borne out of the safety and nutritional value of these products and reliance on their uniform and accurate labeling. This not only benefits the meat industry, but producers and the agricultural community as a whole. Maintaining strong markets for meat products by enhancing consumer confidence is a responsibility of the Secretary of Agriculture as specified in section 2 of the Federal Meat Inspection Act (21 U.S.C. 602). The Department believes this new rule will help to achieve that purpose. The continued drift of labeling on an increasingly broader variety of products under long established and easily recognized terms will eventually lead to consumers' questioning the reliability of label declarations and the true value of the products they purchase. While this may cause difficult marketing decisions in the short term for some processors, it will have a long-term stabilizing effect on the entire cured pork products industry.

Several comments indicated that the qualifying statement "X% Water Added"

was inaccurate in that: (a) It would not reflect the presence of all other substances added in addition to water, and (b) it was inflated because it would be based on raw, unprocessed meat weight rather than on finished product weight. In addition, three commenters said that the proposed labeling for the "non-traditional" products is discriminatory in comparison to the "Water Added" labeling.

With respect to the first point, (a), the Department agrees with the comment and the qualifying statement is being changed. Under this rule, the processor may choose between the following two options: "X% of Weight is Added Ingredients," or "X% of Weight is Added (followed by a list of the added ingredients in descending order of predominance)". The first option would require a separate ingredients statement, but the second option would not.

The second criticism, (b), regarded the percentage figure as inflated and inaccurate. In addition, percentage figures based on raw, unprocessed meat weight become more misrepresentative at higher levels. The Department fully understands the concern and has determined that the percentage figure will truthfully represent the product as purchased by consumers if the percentage figure is based on the weight of the finished product (exclusive of portions removed during preparations) rather than on the raw, unprocessed meat weight. In determining the weight of the finished product and thus the percentage figure for the labeling, the weight of portions removed during preparation (such as bone, skin, and fat) cannot be counted as a part of the raw, unprocessed weight in order for the percentage figure on the labeling to be accurate and truthful. This rule, therefore, states that the "non-traditional" products must be labeled with the percentage of the finished product weight which is added substances.

With respect to the allegation that the proposal would create discriminatory labeling against "non-traditional" products in comparison to "Water Added" products, the Department does not agree. The labeling "Water Added" has long been established for products produced under the standard in 9 CFR 319.104(d), which clearly states a specific water limitation. Because of that long history and consumer familiarity with the labeling, the term "Water Added," as well as other established labeling for cured pork products, is carried forward in this rule to be used on products approximately analogous to

those produced under the existing rules. Retaining as much of the established labeling terminology as possible will also minimize confusion among consumers and reduce the number of labeling changes imposed on the industry. The required labeling for "non-traditional" products is accurate and truthful, provides a basis for consumers to make better informed selections, and lessens economic disparity among the industry.

The proposal set forth a requirement that qualifying statements on labels of certain products be at least $\frac{3}{8}$ inch in height, except for packages of 1 pound or less. A few commenters requested that the weight requirement be changed from 1 pound to 3 pounds on the grounds that the 1 pound restriction "could present problems." Although the commenters did not explain the nature of such problems, the Department's experience is that it relates to the amount of available space on the label to include this requirement as well as all other labeling information. It is common for products of varying weights up to 1 pound to be packaged in the same type of containers. It is the Department's observation that such products are most commonly placed in package sizes of 6, 8, and 12 ounces, with a few products occasionally being 1 pound. When products are packaged in containers larger than 1 pound, the containers have more space on which labeling information can be shown. The Department is, therefore, retaining the proposed 1-pound cut-off for exemption at the Administrator's discretion as proposed.

Four comments were concerned about the number of labeling changes which would result from promulgation of the regulation. As indicated earlier, one of the Department's objectives is to retain established labeling in order to minimize labeling changes. The principal area where processors will need to choose between a change of process or labeling is with the "non-traditional" products. The processor may wish to change the process so no label change would be required, or may opt to change labeling so it accurately reflects the "non-traditional" content of the finished product. In either case, the implementation date of the rule gives processors ample time to make the necessary choice and undertake any required labeling changes.

Although no comment was received which specifically stated that the commenter believed the PFF content would be required on the label of all cured pork products, a portion of several comments appeared to address this

issue in an oblique way. One commenter said, "As we understand the proposed rule, new labeling requirements for cured pork products, based on minimum percentage of meat protein on a fat free basis (PFF) in the finished product, would be established." It can be inferred from this and similar comments that all current labels would require revision, because all such labels would require a statement bearing the PFF content of the product. That was not the intent of the proposal and there is no such requirement in this rule. The PFF content need not be declared on any label unless a processor wishes to do so.

Two commenters claimed that the Department was being unfair to processors versus retailers because the labeling requirements will allegedly not be used by retailers (especially by delicatessens or those with delicatessen counters) in representing products to consumers. The Department acknowledges the temptation for retailers to omit such things as qualifying statements in preparing signs, advertising, and price per pound notices for a product. It should be noted that misrepresenting a product to consumers by omitting any part of the name constitutes misbranding under the Federal Meat Inspection Act and the person (or persons) so doing is subject to civil action or criminal prosecution under the Act. In addition, many states and municipalities have regulations which require the accurate labeling of products in retail stores or food service establishments. Reports of inaccurate labeling at the retail level or in food service outlets may be referred by the Department to State or local municipalities, or to the U.S. Department of Justice, when appropriate.

The possible misrepresentation of meat products to consumers by retailers or food service operators does not appear, however, to justify honoring the commenters' request for a labeling scheme based on how retailers or food service operators will perform in marketing the product. Moreover, it does not appear that establishing PFF as the regulatory basis for cured pork products affects the inclination such entrepreneurs may have for misrepresentation.

One commenter asked about "how the Department would regulate the use of claims for items with moisture content over green weight (i.e., percent fat free, percent lean, calories per serving)." All such label claims will continue to be handled through the use of quality control program requirements. If a processor wishes to make a specific percentage claim on a produce label, the

processor must submit a quality control program to ensure the accuracy of such claim to the Administrator, FSIS, for approval as a part of the labeling approval process.

Compliance Monitoring System

The topic which received almost one-third of the commenters' attention was the compliance monitoring system. Many criticized the system while others supported it. Some offered suggestions for improving the system. The concerns generally had to do with correctly understanding the system; methods used to establish the tolerances; merits of this system versus the present zone system; efficient administration of the system to prevent undue delays and retention of product; the operating characteristics of the system; and the provisions for detaining product in commerce.

The most criticism was directed to the complexity of the compliance system. The compliance system can be best understood by considering the conceptual framework upon which it is based. The PFF standards are meant to be minimum levels for the average PFF value of all units in a production lot. Furthermore, no unit in the lot should be unduly below the standard—that is further below than is warranted by uncontrollable product and manufacturing variability allowed by this rule.

As a matter of economics and practicality, it is not possible for the Department to closely estimate the lot average routinely. Consequently, an inference about lot average and variability must be obtained in other ways. In the compliance system described, that inference is made from estimates of the process average and variability. An adage within quality control literature holds that if a process is "in control," that is, near its required average and variance, then the items being produced are about as good as it is reasonable to expect.

This compliance system keeps track of the process utilizing a low sampling rate until there is indication that the process may not be "in control". At that point, the frequency of sampling is intensified in order to determine if the first signal was an anomaly or if there was true reason for concern. In the former case, low level monitoring is quickly resumed while in the latter prudence requires that each lot be assessed individually because the process estimates provide insufficient definitive information about the compliance of an individual lot.

Before proceeding with a discussion of the issues raised in comments, it seems

appropriate to present a brief summary of the compliance monitoring system. To begin, it has three stages, i.e., periodic, daily, and retention sampling phases. In the periodic sampling phase, samples from all products made under similar conditions are utilized to make an inference about their common process. Generally, no inference is made about an individual product. In the daily sampling phase, intensified sampling allows the Department to make inferences about the processes of individual products. As long as the process is in control, product is considered "in compliance" and moves freely into commerce. The retention sampling phase is reached when no rational inference can be made that a process is in control and the product(s) is "in compliance." In such cases, individual lots are retained, their minimum PFF average determined in accordance with prescribed procedures and appropriate action taken—that is, released into commerce; or reworked or relabeled as is appropriate and then released into commerce. Process control estimates of the average PFF continue to be made. When the process is shown to be back in control and all PFF underages are compensated by PFF surpluses, the system moves back to the periodic sampling phase.

A final comment concerning the "Absolute Limit" concept: It is the conclusion of the Department that there is a limit below which the PFF of a cured pork product cannot occur when the processor is targeting at or above the standard and has process controls with standard deviations no greater than prescribed in this rule. This limit has been estimated at three standard deviations below the PFF standard. The benefit of the doubt in arriving at that estimate was given to the processor in order to arrive at a limit which the Department could place full confidence in and reliance upon when taking corrective action. Consequently, an individual unit found to be below the Absolute Limit is sufficient evidence to warrant retention of the lot, and the process that produced it is certainly suspect.

After sampling and laboratory analysis to determine the PFF, the determination of the process average and "compliance" is made by performing the series of mathematical calculations (i.e., addition, subtraction, multiplication and division) in the sequence specified and by comparing the results to the standards and limits specified. All processors have this capability. The design of these mathematical procedures required

appropriate terms, i.e., standard, deviation, Product Value, Group Value, Standardized Difference and Adjusted Standardized Difference. These are state-of-the-art terms which can be easily assimilated into the working vocabulary by following the steps prescribed in the regulation.

Several commenters were concerned that the compliance monitoring system described in the proposal would interject delay mechanisms into the flow of product, forcing the processor to hold product in warehouses until laboratory analyses were completed and the results returned to the plant or inspector. The regulation neither prescribes any such delays nor implies that delays will be necessary, except when evidence from the compliance system indicates product is out of compliance. This is no different than the current system. The compliance monitoring system is not a quality control system for in-plant process control. In-plant process control is not the Department's responsibility. It is the responsibility of the plant to control their processes in such a way that the finished product is in compliance with regulatory requirements. It is the intention of the Department to monitor each plant to determine if the in-plant controls are functioning, and, if the controls are not functioning, to ensure that adulterated or misbranded products are not sold in the marketplace. Withholding of compliant product from the marketplace is unnecessary and wasteful, contrary to the mission of the Department, harmful to the processor, and against the interests of the consumer.

Use of a computer to perform calculations, keep track of results, direct sampling, and predict the potential for non-compliance will not delay receipt of sample results from laboratories. The computer is being used to perform service operations for inspectors in the normal course of their process monitoring functions required by the Federal Meat Inspection Act. Sample results will be provided to the inspector, whose instructions will be to provide the plant access to the information. The plant will be able to evaluate process controls as well as the compliance of a given lot. For official purposes and to facilitate computer operations and prevent delays, all data for the monitoring system will initially be maintained by headquarters personnel on the computer. They will use the data for analysis of process and compliance trends, directing sampling, and determining the potential for non-compliance. The inspector, and the plant through the inspector, will be regularly

informed of the plant's compliance status and especially where there is a change in compliance status which the plant would consider adverse, e.g., daily sampling of a group, or retention of a product. Furthermore, in such cases, the inspectors will be able to handle all situations in an efficient and effective manner. Administrative and information flow procedures have been developed to minimize computer information delays, especially in critical situations such as going into and getting out of the retention sampling phase.

Several commenters were concerned that in mathematical calculations, the number rounding procedures could result in differences in values if each person/computer were rounding numbers differently. A footnote has been placed in the regulation which includes the rules for rounding.

Portions of the proposal generated many comments about the statistical procedures used. Most comments were critical of the use of Group Values and Product Values and suggested ways of changing the procedures.

One commenter suggested a compliance system using a zone system similar to the one in use now. Another commenter suggested use of a running average. The zone/running average system is used currently. The current system is based on the proportion (ratio) of the average natural water content to the average amount of protein in the raw product. Samples of finished cured pork product are analyzed. The amount of natural water in the pork product is estimated by first determining the percent of protein and multiplying by the ratio. The resulting figure is then subtracted from the total percent water found in the cured pork product by laboratory analysis to give an estimate of the amount of "water added".

The water/protein ratios currently used resulted from analyses of various raw, uncured pork cuts as a part of the regulatory compliance procedure, the scientific literature, and data from industry groups. They are as follows: Smoked ham—3.79, smoked picnics, butts, and miscellaneous cuts—4.0, canned hams, loins, and other cuts—3.83, and canned picnics—3.93.

In order to compensate for variability in raw materials, processing, sampling, and analytic methodology, the Department set a "tolerance" for the regulatory limits to assure that packers would not be unfairly penalized for such variability as was beyond their control. A principal reason that a new enforcement technique is needed rests on the fact that tolerance levels are no longer appropriate to evaluate

laboratory results for water which is added to product. Some processors intentionally manufacture cured pork products which exceed the regulatory limits, and, due to good process control, are able to stay within the tolerances because they are unduly large for process variability. For example, the standard for a "ham, water added" is established in § 319.104(d) of the Federal meat inspection regulations (9 CFR 319.104(d)) and allows only up to 10 percent added water in that product. However, when a sample of an individual cured pork product is analyzed, the tolerance for a single sample of this product is 5.8 percent above the 10 percent limit. Therefore, a single sample of a "ham, water added" product can have up to an estimated 15.8 percent added water and the "lot" is considered in compliance. These tolerances were valid when first established, but today's technology is much more sophisticated and permits a packer to reduce uncontrolled variability to much narrower limits.

Another weakness of the current enforcement procedures involves the calculations used to determine the amount of "water added" to cured pork products. As noted above, water/protein ratios are based on an "average" amount of water and an "average" amount of protein which are naturally occurring in the pork product. Thus, the results of the equation are also an average or estimate. If the result approaches the regulatory limit, some portion of the lot will exceed the regulatory limit but will be within the tolerance. The system included in the proposal and finalized herein does not have these shortcomings.

In addition to these concerns, the present system lacks efficiency and effectiveness since the frequency and necessity for sampling and laboratory analysis are not structured to concentrate on high risk problem areas or products, where there is a greater chance for violations to occur. This is also an area in which the Inspector General recommended that improvements be made, and the Department is doing so in this rule.

Another commenter believed the current system allows the inspector sufficient latitude to tighten controls on plants which operate close to the tolerance of the present system. The current system does allow some latitude, mainly in increased sampling frequency, but the weaknesses in the current compliance system (i.e., large tolerances, lack of efficiency and effectiveness, and an inability to identify non-compliant product) and the

processing capabilities of the industry (i.e., good process controls and reduced variability of processes) reduce the effectiveness of the inspector's actions and, in some cases, are an exercise in futility. The compliance system in this rule overcomes these weaknesses of the current system.

In discussions of the Group Value and Product Value procedures, there was concern by some commenters that use of the PFF results from retail samples and inspector-initiated samples to calculate the Group/Product Values would invalidate these values. The Department agrees. Inspector-initiated or retail samples will not be used to calculate Group Values and Product Values. However, inspector-initiated and retail samples could, and will where necessary, result in increased in-plant sampling rates and possible collection of additional samples from retail lots.

The retail samples serve as a check to ensure that the compliance monitoring system is functioning properly and that processors are fulfilling their responsibility of producing product which is in compliance. The inspector-initiated samples are intended for documentation of processing deficiencies or other obvious problems observed by the inspector in the plant. However, violations of the Absolute Minimum PFF requirements will be treated as such without respect to the purpose of the sampling. Such violations strongly imply that a misbranded and/or adulterated lot is represented by the sample. A reasonable reaction, and the one which the Department will take, is retention or detention of the lot until definitive conclusions can be drawn and such actions taken as will assure that the lot, when released, will not be adulterated or misbranded. Other legal actions will be taken in appropriate circumstances.

Changes in the "operating characteristics" of the compliance system were suggested by several commenters. Several suggested that the Group Value be permitted to reach a value of 2.0 rather than the 1.0 proposed because "the proposal does not give sufficient credit to low yielding samples or to operators whose own standards are well above the minimum PFF. . . ." This would, as the commenters viewed it, be a reward for complying with the regulations, and would also have the effect of permitting processors to accumulate and credit PFF surpluses against potential future PFF shortages to a much greater extent than was envisioned when the proposal was written.

The PFF standards are set as lot averages. Allowing the Group Value to go to a maximum of 2.0 would lengthen the average run length (ARL) and reduce the responsiveness of the Group Value so that large changes in the Group Value would not be detectable. For a value of 2.0, processors could "bank" Group Values with small lots so they could later produce large lots of non-compliant product without fear of retention because of low Product Values. However, the Department considered the concern which resulted in the suggestion and decided it has certain merit. The rule includes a small change in the standard deviation allowed to permit a larger percentile of processors to be within the variability recognized. This change has some of the same effects for those processors with higher standards, as changing the Group Value maximum and does so without the shortcomings associated with increasing the allowable Group Value. The proposed tolerance was set so that approximately 60 percent of all processors would have a standard deviation less than the tolerance. After review of the comments regarding the maximum Group Value and the data from the variability survey, the Department has decided to change the tolerance to the 75th percentile so that three out of four firms have a variability which is less than the tolerance.

A foreign commenter suggested limiting the negative value of the Product Value (which causes retention) to -1.65. Further, it was suggested that after retention, the Product Value would be 0.00, and a specific number of consecutive lots would have to meet or exceed the minimum PFF regulation. The Department sees no merit in limiting negative values. To do so would permit products with an extremely low protein value to be considered in compliance. It is appropriate that each producer be fully responsible for his/her own products, and that the standards not be compromised. The objective of the regulation is to ensure the process average meets or exceeds the PFF specified in the standards. The PFF standards are lot average standards. This means that, on the average, each lot of product must meet the standard. Limiting the negative value of the Product Value will not assure that the process average is met because the processor can start raising the Product Value to zero from -1.65, no matter how far below the -1.65 the Product Value falls. The process average during that time it was being raised back to zero would be less than the standard. By allowing the negative value of the

Product Value to go past -1.65, the Department has information as to how much protein shortage there is, and is requiring the processor to replace the shortage with subsequent lots. Therefore, this rule retains the allowance that negative Product Values continue to accumulate past -1.65, i.e., -1.66, -1.70, -1.80, -1.95, and so on.

Retention is caused by the Product Value going past -1.65. If the Product Value were changed to 0.00 after retention, two important objectives would not be attained. First, product produced with less than the minimum PFF protein level, protein lost to consumers, would not have to be fully offset by subsequent product containing protein over the minimum value. This is a fair objective, one which encourages producers to maintain good processing controls and product consistency. Second, it does not ensure maintenance of the process average at or above the PFF requirement.

One commenter suggested that the proposed statistical procedures would not accurately determine if the process were maintaining a process average equal to the standard. The example given was "[Product Value] + PFF defines the control yield which will always be less than PFF. If 17.0 defines a label, should not the [Product Value] + PFF permit an ongoing operation at 17.0." The statistical procedures are designed to ensure that the PFF standards are met. The Department's interest is in maintaining compliance with the standards, and has designed the compliance system to detect when the lot average is not consistently maintained at or above the PFF standards. Allowances are made for variability inherent in processes which are following good manufacturing practices.

Another commenter surmised that when non-complying product was relabeled to bring it into compliance with a lower standard PFF than the original standard for which it was processed, the PFF value would be used to calculate the Product Value for the lower of the two standards. This is not the case and was not the intent of the proposal. Such policy would negate the purpose of the program, in that process controls would not be maintained, and individual analytical results would have no value in determining future actions on the part of processors.

One commenter suggested the Absolute Minimum PFF requirements for proposed Groups I, II, and III should be the same. This is not proper because the Absolute Minimum is set at three standard deviations below the mean of the process. The standard deviation is a

statistical measure of the dispersion of values around a mean. The standard deviations for Groups I, II, and III are different, so the Absolute Minimums vary accordingly. The Department has concluded that no meaningful purpose would be served by abandoning this principle for the sake of a uniform Absolute Minimum.

The proposal stated the risk to the processor, that the first sample would cause retention was a 5 percent probability as a result of chance when the process average was equal to the PFF standard and the variability was no greater than that recognized in the proposal. Some commenters said this probability of retention on the first sample is unacceptably high. This observation has merit and the Department has determined that a change can be made without jeopardizing consumer protection. Therefore, the rule increases the standard deviations allowed and reduces the processors risk to approximately 2.5 percent.

Other commenters insist processors must control their process in such a way that the target PFF for their process must be above the standard. This will be true for approximately 25 percent of processors whose current standard deviation is greater than that allowed in this rule. That percentage would drop if processors improve their controls. The Department has determined the standard deviation allowed is fair to processors while providing consumers with adequate assurance that they are purchasing products meeting the PFF standard.

A comment of particular concern to the Department alleged that the proposal was a subterfuge to mandate quality control in the cured pork industry. The reasons for the proposal have been fully discussed elsewhere, but it would seem advisable to emphasize that: (1) The proposal is in part a procedure the Department will use in monitoring the processes of the industry to assure consumer protection; (2) a processor's process controls will not have to be based on PFF to comply with the regulatory standards; (3) the PFF standards for those products previously codified in the regulations are mathematically equivalent to the added substance and added water requirements in the existing regulations, i.e., the standards have not changed (except that the "non-traditional" standards have not been previously codified); and (4) quality control procedures of some type are used in each processing plant even if they are not formalized and/or approved by the Department for use. It is true, however,

that the PFF compliance monitoring system will not be used in the same manner in those plants with approved quality control procedures which are designed to achieve the same or higher degree of assurance of compliance as the compliance monitoring system.

Two commenters requested the minimum requirements for a PFF quality control program be included in the regulation. Since most quality control programs are formulated in a very large part to provide for a consistent and uniform finished product at a predicted cost, and to conserve resources in so doing, in the absence of any public health hazard, the Department is hesitant to engage in prescribing specific criteria (while aimed at regulatory compliance) that could inadvertently interfere with these goals in some operations. It should be noted that general requirements for quality control programs are contained in § 318.4 of this subchapter (9 CFR 318.4).

Some commenters believe the requirement that producers of "non-traditional" products must have an approved quality control program is discriminatory against those processors and those products. They pointed out that products manufactured under § 319.104(d) (9 CFR 319.104(d)) are exempt from quality control requirements and extra labeling requirements.

This rule permits processors to market cured pork products with PFF values below those proposed for traditionally labeled product by providing a new category of product to be labeled "(Product) and Water Product—X% of weight is Added Ingredients." The maximum percent of added substances (water and other ingredients) in the finished product on a total weight percentage basis would be inserted as the X value. For example, the standard for a product labeled "Cooked Ham, Water Added" would require that it contain a minimum PFF of 17.0. If a processor wanted to use more water or other ingredients and dilute the protein below the PFF of 17.0, this rule would allow the preparation of such a product when it is labeled "Ham and Water Product—X% of Weight is Added Ingredients." This deregulatory feature means that product with a great variety of PFF values below the minimum standards will now be possible for processors to prepare and market. If produced, assurance is needed that their labeling is accurate and truthful. Therefore, the Department is requiring that processors produce such products only at plants for which a partial or total quality control program has been

approved and is in effect in accordance with 9 CFR 318.4. The Department recognizes that this does prescribe additional requirements for those plants which might want to produce a product with a lowered protein content. Nevertheless, the Department has concluded that conventional inspection methods, unsupported by in-plant controls which are well designed and carefully monitored, are insufficient to assure the product would be accurately labeled. The level of added moisture and other substances in the product is difficult, if not impossible, with modern processing technology, to intelligently monitor without comparing inspection observations to data recorded as part of a well designed and carefully supervised control system.

Adoption of these provisions facilitates the development and maintenance of appropriate quality control programs by providing greater specificity as to the procedures and criteria for assessing the adequacy of such programs. It also facilitates the integration of plant quality control under this regulation with any other approved (voluntary) plant quality control programs that manufacturers choose to operate.

Some commenters believed the use of the PFF compliance monitoring system requires in-process controls based on PFF. This is not the case. In-process control parameters are left to the judgment of the packer as long as the finished product complies with the PFF standard. This means that if the processor wishes to use some other means of control, in an approved quality control system or program, it is possible to do so. The procedures used only need to be proven at least as effective as the compliance monitoring system of this regulation in maintaining compliance with the PFF standards.

Other commenters said that certain definitions were inadequate and needed clarification. For this reason, those definitions dealing with PFF products and Groups are being clarified. The definition of PFF has been changed to clarify that it includes only the meat protein indigenous to the raw, unprocessed pork cut. The formula used to derive the PFF is unchanged, i.e., $(\text{Percent of meat protein} / (100 - \text{percent fat})) \times 100 = \text{PFF}$. This clarifies the definition to reflect the proposed intent, namely to exclude all other proteins; e.g., plant proteins, microorganism derived proteins, animal derived proteins (blood, bone, and muscle), and any extracts from such proteins.

Several comments questioned the definition of the products covered by the regulation. It is especially important to

clarify this since the only action resulting from the compliance monitoring system is directed at a product. Some products may at first glance appear to be in two Groups. For instance, product which is imperviously encased and is then water cooked may appear to fit into Group I and Group II, but by definition will fit into Group I since it is packaged in a sealed container that prevents the entry or escape of moisture during the cooking process (imperviously encased). Further, semi-boneless hams may appear to fit into Group III and Group IV, but by definition will fit into Group IV since they still contain some bone. Group III is reserved for those products which are completely boneless. Therefore, products correctly fitting into Group I, because they are imperviously encased, by definition will fit into that Group regardless of any other considerations; products not fitting into Group I but fitting into Group II, because they are water or steam cooked, by definition will fit into Group II regardless of any other considerations; and products not fitting into Group I or II will be placed into either Group III, if boneless or, Group IV, if semi-boneless or bone-in. The problem of understanding the Groups and Product definition appeared

to be one of presentation; and use of a chart like the one below will aid in the understanding.

Group V has been deleted from the regulation as several commenters correctly pointed out that it is a non-definable Group. In the initial statistical analysis, the products which were included in Group V should have been placed in other Groups.

To aid processors in arranging their cured pork articles into the proper Groups and Products, the following chart has been devised. For existing products, the labeling file could serve as the source of information. Use of the chart begins with Group I. If there are no cured pork articles that fit into a Group, skip to the next Group. But if there are Group I articles, for example, which are found in the labeling file, prepare a complete list of all cured pork articles which are cooked in impervious containers. Once the list is finished, transfer the name of each article into the appropriate box under the column for Group I depending on the type of product (ham, shoulder, etc.) and the way it is labeled ("With Natural Juices," "Water Added," etc.). After finishing the task for Group I, repeat the procedure for Groups II, III, and IV cured pork articles in that sequence.

PRODUCT GROUPING CHART

Product name and qualifying statements	Groups ¹			
	I	II	III	IV
	Cooked while imperviously encased	Water cooked in pervious container	Boneless smoke-house heated	Bone-in and semi-boneless smoke-house heated
1. Hams				
2. Pork loins (includes Canadian Bacon)				
3. Pork shoulders (includes picnics and butts)				
4. Hams, with natural juices				
5. Pork loins, with natural juices (includes Canadian Bacon)				
6. Pork shoulders, with natural juices (includes picnics and butts)				
7. Hams, water added				
8. Pork loins, water added (includes Canadian Bacon)				
9. Pork shoulders, water added (includes picnics and butts)				

¹ All cured pork articles listed in each cell under any Group column represent one product, and all those cured pork articles in any column comprise a Group.

Some commenters took exception to the Department's definition of a lot, saying that one day's production involved too much product in the event of a recall, retention, or detention. Many wished to have a lot defined by the processor.

This definition of a lot, i.e., product from one production shift, represents the process capability of people, equipment, and materials of one continuous production run; it provides a convenient and meaningful bracket within which to look for failures in the event defects are found in finished products; and finally, it

allows the Department to fulfill its regulatory obligations more effectively and efficiently. The definition is retained as proposed. This provision does not, however, interfere with a plant specifying a lot in its own terms for a quality control program submitted under the provisions of § 318.4 of this subchapter (9 CFR 318.4).

Several commenters requested a method for determining the amount of added ingredients for declaration on "non-traditional" product. They especially wanted to know if the percentage declared as "X% added

substances" was to be a percentage of the weight of the raw, unprocessed pork cut or a percentage of the weight of the finished product.

The amount of "added ingredients" in a product with a PFF below any permitted by the standards in § 319.104(d) will be based on the percent of "added ingredients by weight" in the finished product. This is a change from the proposal which based the X% label declaration on the percentage of the weight of the raw, unprocessed pork cut. Here again, if the processor wishes to use some other means of determining yield, a method which has been shown to be as effective as weight control and which has been approved as part of a quality control program will be acceptable.

Some commenters stated that the use of the Group concept was unnecessary and would not be useful. They believed that a compliance system should be based strictly on monitoring processes for single products. One commenter said "... * * the variability of processes within a given product category (e.g., ham, water added) as proposed could be tremendous * * *. A water added ham with an added water target of 4 percent and a water added ham with an added water target of 10 percent are monitored as if they are the same product."

Statistical treatment of laboratory results is an essential element of the program and will be used to the fullest extent possible to efficiently assure compliance since it will determine frequency of sampling for certain products or Groups of products. If, for example, laboratory results indicate the future likelihood of adulteration and/or misbranding of a given product in a given plant is small, the rate of sampling will be reduced and the Department's resources will be utilized more productively elsewhere.

Statistical treatment of laboratory results also allows grouping and cross utilization of data, thus adding efficiency. Grouping of products does not mean, however, that an enforcement action would be taken against a Group. Such actions would be directed at a product (as defined) and then only after product data revealed a problem. Group data only influences sampling frequency pursuant to authorities currently expressed in the regulations. The only effect of violating the Group Value Action limit is a shift from periodic to daily sampling. This should allay the fears of one commenter that processes would be doubly monitored and that violation of either the Group Value Action Limit or the Product Value Action Limit would result in retention.

One commenter was concerned that the compliance monitoring system would be based solely upon product content of protein and fat, and pointed out that the PFF could be controlled through pumping and smoking procedures. It is true that finished product PFF is not only subject to within lot variability but to the dilution of the protein content by the pump percentage and the concentration of protein content based on the heat processes used. However, the Department is satisfied to leave process controls to the processor and focus on the component of the finished product which is the most important to the consumer, meat protein.

A foreign commenter stated that canned product intended for slicing or further processing should be controlled and labeled in accordance with the minimum PFF required by the ultimate consumer package. The Department recognizes that a product may be relabeled after further processing, and the rule does not prohibit a change in the product designation provided the appropriate criteria are met for such labeling. However, conformity with the Federal Meat Inspection Act requires that any label not be misleading, and thus, criteria for a given label may not be excused on the premise that the product will later be labeled properly.

Many commenters were concerned that the procedures needed to get out of retention were excessive or harsh and were radically different than the procedures required by the current system. It is true that the procedures in this rule are significantly different from the present requirements, which have become weak and ineffective and necessitated these changes. The standards are set as minimum lot averages to assure that consumers receive the PFF content specified in the standards. Retention occurs only because there has been a shortage in PFF; that is, consumers did not get the full amount of protein they had a right to expect. Consequently, the compliance procedures are designed to detect lots that are not meeting the PFF requirements, and, when detected, to assure the full measure of protein is returned to consumers by production of product containing offsetting levels of protein above the minimum PFF level.

One commenter expressed concern that even after reprocessing or relabeling of product to bring it into compliance, the reprocessed/re-labeled product could not be released for shipment until future lots of product were also brought into compliance. Such is not the case. A compliant lot of product will be released.

Two other commenters were concerned that the adjustments to processes required by the proposal were excessive. One believed that making a change in the processing procedures should be sufficient to bring a product back into compliance and allow free movement of subsequently manufactured products. The other was concerned that changes in more than one process would be mandated.

The current procedures allow a processor to make a change in a process and allow free movement of product. Such a change may not be sufficient to assure that the lot average will be maintained at or above the minimum PFF requirement. This is one of the reasons for the proposal. Process changes are not mandated but, in most cases, processors will find them necessary. However, the processor may maintain compliance in the manner best suited to the operation.

Some commenters believed that a lot should be resampled in lieu of reprocessing or relabeling. The proposal and this rule provide that if a lot is put into retention by a Product Action Limit violation or by failing to meet the Absolute Minimum requirement, three additional random samples are taken from the lot in order to determine the lot average PFF. This normally provides the basis for the disposition of the lot; i.e., release, relabel, or reprocess. A processor that wishes disposition to be based on the lot average PFF from a larger sample may generally do so. The rule has been modified to allow processors to propose an alternate sampling procedure for demonstrating that the lot average meets minimum PFF requirements; however, the sampling procedure must be submitted to the Administrator for approval in advance of its use, and any additional expenses for sampling and laboratory analyses must be paid by the processor. Any alternate sampling procedure must be at least as accurate an estimate of the lot average PFF as the Department's procedures.

One commenter was concerned that when a product is retained, detained, or voluntarily recalled, the Department would not provide the processor with the lot numbers and other identifying characteristics of the lot so that the processor could take corrective action. The Department will provide the lot numbers if available. The Department intends to provide the processor with as much information as is reasonably possible. It is in the best interest of the consumer, the processor, and the Department that corrective actions are taken to prevent adulterated or

misbranded products from entering the marketplace.

One facet of the proposal which elicited many comments was the absence of specified random sampling techniques, frequencies, and sizes. Other comments were more specific, stating that small processors could not support the loss of many samples especially when custom curing, and asked that composite samples be used or the processor be compensated for the loss. Some were concerned that the inspector and the plant would not be adequately informed of the progress of the Group Value and Product Value, especially when a sample had the potential of sending the Product Value past the Product Action Limit putting product into retention.

Even though the proposal indicated that sampling would be random, one commenter requested that specific random techniques be prescribed to prevent disruption of normal production, packaging, and shipping operations. It would seem impractical for the Department to attempt prescription of sampling techniques in such detail and to expect that any such prescription could be applicable in every plant. The proposal did indicate that sampling would be random and based on a centrally directed program. The Department will expect its inspectors to use random procedures that minimize disruption to normal operations while preserving the principle of randomness.

Sampling frequencies were not specified in the proposal and are not specified in the rule because fixed sampling frequencies would counteract the value of statistically determining the probability of adulteration or misbranding on the basis of processing history. Fixed rates could result in unnecessary sampling in some instances. This is of concern not only because it would be an expense without return, but also because it is likely to impinge on sampling where the potential for adulteration or misbranding has been demonstrated to be substantial. Fixed sampling rates could also result in emerging problems going undetected until only the most expensive remedies (retention, detention, and/or recall) are available for resolution. The Department desires to use its limited resources as efficiently as possible. Therefore, sampling will be no more frequent than is necessary for reasonable assurance that cured pork products are neither adulterated nor misbranded as it relates to PFF.

The sample size recommended by several commenters was 3 pounds and some were concerned that certain consumer size units (e.g., a 4-ounce

package of sliced, pressed ham) may not be sufficient in size for analysis. After considering the comments, the Department has decided that sample sizes will not be specified in the rule. It will, however, be the intent of the Department to continue using the sampling instructions now prescribed by § 23.2 and § 23.3 of the Meat and Poultry Inspection Manual. (Copies of these instructions are available from the Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.) These instructions have worked well and this rule does not seriously alter basic sampling requirements.

In regard to a consumer size sample being so large as to be a significant portion of a small processor's production, the Department is aware of the problems of small processors and plans to keep these concerns in mind. One example is that volume of production is factored into sampling frequency. Finally, the commenter concerned about the sampling of custom cured products should note that custom cured product, exempt under the inspection provisions of Part 303 of the Federal meat inspection regulations, is exempt from the sampling provisions of this rule but is still subject to all other provisions.

Some comments suggested compensation for samples from small processors. The Department has long recognized the unique characteristics of small processors in relation to the requirements of the Federal Meat Inspection Act. In several initiatives in the past, and in the PFF proposal, these characteristics were weighed as policies were formulated. In each case, however, and in this rule, the Department has stopped short of distinctly separate treatment. It should be noted that the nature of the PFF compliance system minimizes sampling in general, and that of the low-volume processor in particular, especially if such processor's cured pork products show little indication of adulteration or misbranding. In addition, some small processors might choose to implement quality control programs that give high levels of assurance that PFF requirements will be met. The Department will assist, upon request, in the preparation of such programs.

Four commenters believed that sampling frequencies will increase with this regulation. This may be true, if a processor has process variability which is higher than that specified in the rule and is not targeting the process average sufficiently high to compensate for such

variability. Sampling frequency will also increase when the processor has a poor compliance history, or when the Group Value and Product Value approach the Action Limits. Many processors with good process controls, a process average equal to or above the standard, and a good compliance history can look forward to a sampling frequency which is less than average. The Department has determined this is an equitable way of ensuring compliance and maximizing utilization of laboratory resources. It is also consistent with the Department's philosophy of minimizing regulatory intensity where there is little likelihood of a problem.

A proposal to use composite samples for making regulatory decisions came from several commenters. The Department has used composite samples for cured pork and other products as a means of conserving laboratory resources. That practice will not be a part of this rule, however, because it would be:

1. Less effective for conserving departmental inspector and laboratory resources than the compliance system used under this rule;
2. Unduly expensive, unnecessary, and wasteful, especially for the small processor, during the Periodic and Daily Sampling Phases; and
3. Inadequate for use during retention, since a single analysis of a composite sample from a retained lot does not yield variability information about the lot.

Moreover, it should be noted that if a "composite sample" approach had been taken, the action limits and other considerations in the compliance system would be different since a composite sample would, among other things, average out some of the variability that is now recognized and allowed. This does not prevent a processor from using composite samples if he wishes to do so for his own process control procedures. In such event, the processor should investigate a total quality control system or a partial quality control program.

Some commenters were concerned that the information they received regarding compliance samples would be incomplete. They requested that the plant receive a copy of the information generated by the computer which will be forwarded to the inspector and that they be informed of how the sample results affected the Group Value and the Product Value.

Data will be conveyed from the computer to the plant via the inspector. This will include information about how the sample result affected the Group and Product Values and retention status,

whenever a potential problem exists. In normal situations where there is little likelihood for problems, less information may be provided. However, the inspector will be instructed to also share that information with the plant.

Sixteen commenters said that a new proposal should be issued revising the existing compliance procedures, presumably using moisture/protein ratios, running averages, and tolerance zones for individual sample results as well as for the running averages. As discussed in the preamble of the proposal and in this document, the existing procedures have become ineffective. There is ample information which indicates this to be the case, including the report of the Department's Inspector General. A new approach is needed, and the Department has determined that the PFF concept described in the proposal, as modified by its study of the comments, fills that need. The Department cannot justify the perpetuation of a compliance system which has become outmoded due to major advances in food technology over the last 15 years.

Laboratories

Comments addressing laboratories generally related to the use of accredited laboratories and laboratory procedures.

The use of accredited laboratories (non-FSIS laboratories which have been accredited by the Department to perform certain official analyses) has apparently become very important to some processors because analytical results are available in a more timely manner. They are also very helpful to the Department by reducing the workload in its own laboratories.

Many commenters apparently understood the proposal to mean that accredited laboratories would no longer be used. This is a misconception which appears to be based on several facets of the proposal; e.g., the central direction of sampling frequency and central processing of data to determine compliance.

The centrally directed activities involved in this regulation are, to a large part, performed as a service to the Department's inspectors. Accredited laboratories have never been involved in providing such services to the inspector. They have been providing the inspector with results of the protein and added substance determinations. Some accredited laboratories have been expressing opinions about the compliance status of the product based on the analyses, but, in all cases, the inspector has the final responsibility for determining compliance on both single

samples and running averages. It should be noted that this rule is designed so that the inspector no longer needs to maintain results of laboratory analyses. The decisions about compliance are based on objective data, and the computer will be used as a tool to make the appropriate calculations as spelled out in this rule.

The computer's uses have been fully discussed elsewhere in this document, but it may be useful to discuss the inspector/computer accredited laboratory interaction. The computer needs the Group and Product Value data to determine the sampling frequency and the products to sample, and to estimate the potential for non-compliance for any given product. If the inspector maintains Group and Product Value data, it becomes a duplication of effort. Therefore, to minimize duplication of effort, efficiently utilize resources, and make the inspector's job easier, the computer will keep track of the Group Value and Product Value. To assure proper functioning of the compliance system and an objective evaluation of the analytical results from accredited laboratories, in addition to providing the inspector with the laboratory results, procedures will be established for the accredited laboratory to forward such results to a central data collection station where they will be entered into the computer.

Laboratories may make an application for accreditation by writing to the Accredited Laboratory Coordinator, Chemistry Division, Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.

One commenter read the proposal as requiring that each lot of product be analyzed for PFF before it is shipped from the establishment. This was not the intent of the proposal, nor is it required by the rule.

Some comments were concerned with laboratory costs. Several processors believed they will need to do considerable research to determine what process average PFF level is maintained by their process and where they should set their process target to maintain compliance. Others were concerned that more analyses will be necessary, and still others were concerned about greater costs because PFF determinations require fat analyses—a step not currently necessary.

Those processors who are in compliance with the present compliance system will be able to comply with the compliance monitoring system for PFF. "Non-traditional" products would be an exception only because the labels or

processes for these products will change. There should be no need to increase the number of analyses performed for any products, to perform extensive research for determining the average PFF of the process, or to make a change in the process target. For other processors, greater diligence will be needed until process targets can be adjusted to coincide with the process variability.

Regarding the cost associated with analyses, the total costs are lower. The Department is aware that the fat analysis alone may be more expensive than any other single analysis, but the total costs involved in determining protein and fat content (necessary for this rule) are less than the total costs for determining protein, salt, and water content (needed under the present system).

Several commenters were concerned about the precision and accuracy of laboratory analyses and the potential for an inaccurate analysis resulting in retention or reduction of product. There were several suggestions which were apparently designed to increase the confidence level of laboratory analyses. One suggestion was that the Department require a rerun on those analyses which indicated abnormally low protein content in a product. Another suggestion involved the rejection of any result in which the total of all analyses, i.e., protein, fat, water, salt, and ash, exceeded 100 percent of the sample. A third suggestion included the collection of two samples instead of one so that the second sample could be forwarded to a second (accredited) laboratory for analysis if the first sample indicated that product was out of compliance and the processor requested the second analysis. The Department appreciates these suggestions, but believes that sufficient quality control procedures are in place to assure good laboratory practices. The Agency's Field Service Laboratory and Contract Laboratory Quality Control procedures are given in the Chemistry Quality Control Handbook, volumes I and II, and the Chemistry Laboratory Guidebook. (Copies of these documents are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) These documents describe a variety of procedures such as Critical Control Point Specification, Analysis Proficiency Standards, Process Control Chart Specifications, and laboratory check sample and "split" sample procedures. These latter, provide a check in the proficiency of the laboratory.

Additionally, each of those laboratories has a Quality Control Officer, who monitors compliance with prescribed procedures independently of the supervising scientist. Analogous procedures and checks are required of accredited laboratories. It is the Department's intention that a description of requirements for accreditation and maintaining accreditation be the subject of a separate Federal Register notice.

In view of this extensive mechanism to assure accuracy, the adoption of the suggestion for selective reanalysis of samples and rejection of sample results would be inappropriate. The required assurance is built into the system and reanalysis would be extremely unlikely to modify results significantly and could cause undue delay in the regulatory process.

Retail Sampling/Compliance

Several comments were received regarding the use of "retail samples." Generally, concerns were expressed about the need for retail sampling, the possible regulatory actions which could result, and adverse publicity that might ensue. Some believed that the Department does not have authority to collect retail samples and cannot hold the producer responsible for violative product found at retail. Others believed that the results of the analyses of retail samples should not be used to calculate the Group Value or the Product Value.

The Department has clear authority under the Federal Meat Inspection Act to collect samples of products at any point in commerce, including the point of retail sale, in order to determine compliance with the requirements of the Act. (See section 202 of Act; 21 U.S.C. 642.) That authority was upheld in *Chip Steak v. Hardin*, 353 F. Supp. 438 (N.D. Cal. 1973), affirmed 502 F. 2d 764, cert. denied 420 U.S. 928. Under the Act, the responsibility of both the Department and the inspected establishment to assure wholesome, properly labeled product extends to the point of retail sale. In fact, this is one of the most critical points for regulatory control since it represents the point where the ultimate consumer purchases the product. While certain retail sample results, specifically those failing to meet the absolute minimum PFF requirements, may provide a basis for further regulatory action, these results will not be used in calculating Group Values and Product Values for plant monitoring purposes.

Many commenters expressed concern that the retail sampling of products could lead to the detention, retention, or recall of products. These commenters

believed that this aspect of the proposal was too stringent, was unfairly directed at these particular products, and was too broad in scope. Others expressed concern that detentions would automatically lead to recalls which would generate negative publicity and consumer mistrust of the meat industry.

It is the responsibility of both the Department and the official establishment to assure that product is not adulterated and is properly labeled throughout commerce. Under Section 10 of the Federal Meat Inspection Act (21 U.S.C. 610), the sale, transportation, offer for sale or transportation or receipt for transportation, in commerce, of any inspected article which is capable of use as human food and which is adulterated or misbranded at the time of such transaction, constitutes a criminal offense. Also, it is a criminal offense to do, with respect to any such article capable of use as human food, any act while the article is being transported in commerce or held for sale after such transportation which is intended to cause or has the effect of causing such article to be adulterated or misbranded. The Secretary's authority to detain or retain product is an important tool in dealing with such violations. Under appropriate circumstances, the Department, in exercising its detention authority, works with official establishments and or distributors to effect voluntary recalls to protect the public health and well being from products that present a risk of injury or gross deception or are otherwise defective. In some cases, a voluntary recall may be an alternative to detention or seizure action. The Department's procedures concerning voluntary recall are contained in FSIS Directive 8080.1, copies of which may be obtained from the Emergency Programs Staff, FSIS, U.S. Department of Agriculture, Washington, D.C. 20250. As such, the discussion in the proposal of detention, retention, and voluntary recall did not constitute any new or unusual assertion of the Department's authority, but served as a reminder that the Department is not in a position, once violative product is identified, to condone its continued distribution in commerce.

The purpose of a public notification is to alert the public and trade that either product is being recalled because it presents a serious health hazard, or because a situation exists for which such notification is deemed to be in the public interest. Each recall will be considered on a case-by-case basis as to the necessity for public notification; provided, however, a press release or other form of public notification will be

issued when a recall involves a health hazard situation where there is a reasonable probability that the use of the product will cause serious, adverse health consequences or death. However, information on any recall action will be made available to the public or press when inquiry is made, provided that such information is not exempt under the Freedom of Information Act.

Several commenters were concerned that in a voluntary recall situation, more than one product would be subject to such recall; i.e., an entire Group would be affected. While this is not true in relation to a product as defined by the rule (a retention, detention, or voluntary recall prompted by the results of any sample will affect one product only), the comment apparently used the term "product" in a more restrictive sense. For example, several brand names, several sizes and/or several different pickle formulations might result in one "product" as defined for purposes of this rule, but be considered as many products for marketing purposes. It is indeed true that in such cases several such commercial "products" will be affected when they all meet the criteria of the rule's definition for a product. The comments offered no data to refute the Department's criteria for establishing a product designation based on product standards and processing similarities. The Department has determined the product criteria to be appropriate, and the rule is promulgated as proposed.

Some commenters were concerned that a detained lot would be required to be reprocessed/re-labeled based on the PFF of the single retail sample which initiated the detention. Others were concerned that reprocessing or relabeling would not be allowed. Neither is the case. Detained product will be handled similar to retained product which is in the plant. A single sample failing to meet the Absolute Minimum PFF requirement initiated the detention, but three samples from the detained lot will be taken to determine the lot average PFF. The average PFF content based on the three samples will determine disposition of the lot. If the average PFF content of the three randomly selected samples is equal to or greater than the applicable PFF standard required by § 319.104 or § 319.105, the product will be released from detention. If the average PFF does not meet the standard, the product must be relabeled, or provisions made for reprocessing it. The provisions for reprocessing and relabeling are defined in § 318.19(c)(1) of the rule. If the processor does not wish to have the product evaluated in this manner, alternate sampling plans may

be used provided such plans have been formulated by the processor and approved by the Administrator prior to evaluation by the three sample criteria, and provided the analyses specified in such plans are performed at the expense of the processor.

Imported Products

More commenters addressed this topic than any other. The comments from domestic processors noted that the proposal did not mention foreign products imported into the United States. Their primary concern was the potential for unfair competition. It is required by the Federal Meat Inspection Act that imported products comply with all standards for domestic products. It is true that specific sampling and evaluation procedures for imported products were not contained in the proposal. Before implementation of this rule, however, it is the Department's intention to complete rulemaking which will contain unique compliance monitoring features appropriate to imported cured pork products.

One foreign commenter stated that some products from the country represented could not meet the standards established by § 319.104 and § 319.105 and requested the standards be lowered. This request must be denied. The standards reflect the character of domestic products and must be met by all firms competing in the marketplace. However, the foreign processor has the option to label product to compete with other products manufactured to meet specific PFF standards.

Another foreign commenter suggested that if the PFF standards were implemented, all analytical results from laboratory samples be supplied to the processor of the imported products. While the Department intends to share information with affected parties as appropriate, it has concluded that commitments in this rule as to the nature of such sharing are inappropriate. It should be noted, however, that, in all cases, the government of the exporting country will be apprised of the results of import sampling. Exporting processors may wish to arrange with their governments for transmittal of such data.

Economics

Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354) require the Administrator, Food Safety and Inspection Service, to make a determination of the economic impacts of any proposed rule on industry, consumers, and the economy. The Administrator has made an initial

determination that the proposed rule would not have a major impact on the economy and would not have a significant impact on a substantial number of small firms. Notice of that determination was published with the proposed rule.

As previously mentioned, the Department received over 120 comments on the proposed rule; slightly less than 10 percent of those who commented expressed some concern over the rule's potential economic impact.

Three commenters expressed concern over the potential increased operating costs associated with establishing PFF controls, use of laboratory analysis, and mandatory delays in product shipments. The Department points out that the new rule does not require the establishment of new controls by industry or impose any additional analytical requirements or product delays on industry.

This rule does not mandate use of non-FSIS laboratories. Any such use will be at the processor's option. As with the existing regulations, if the processor has found it advantageous to use a non-FSIS laboratory, there is a good chance that similar advantages will continue under this new rule. The fear that more analyses and thus more costs would be needed is not well founded. Based on the compliance data evaluated by the Department in preparing the proposal, in general, those processors having little or no compliance problems with the existing rules will have little or no problems complying with this rule. The reverse is also true, and in this connection, it is the intent of this rule to improve the Department's ability to prevent the marketing of potentially adulterated or misbranded cured pork products than has been done with the present rules. To that end, the Department will take and analyze samples, as it is currently authorized to do. The time lag for FSIS laboratories to do the testing and return the results to processors will be no different than what has existed in the past. Then, if laboratory data indicate that a processor's product is out of compliance, the regulatory action taken, namely retention (or detention) for reprocessing or relabeling, will be the same actions as the Department is currently authorized to take. Any necessary regulatory action could be interpreted as an economic cost, but not one which is new or unique to this rule.

Another commenter suggested that the regulation would result in price-fixing without explaining how this might happen. Based on a review of the regulation, the potential effects suggested by other commenters, and available studies of the industry, the

Department fails to see how price-fixing would be facilitated by the rule. In fact, the available information indicates that both the packing and processing segments of the industry are subject to vigorous and effective competition.

One commenter stated that the rule would increase production costs and cause increased unemployment as a result of business failures. The Department has considered this comment, but does not believe that the rule will have the alleged economic impact. The new rule does not necessarily require any change or expense for processors who are complying with the current standards and do not wish to change their products. The rule does, however, recognize changing consumer demands and permits the sale of new cured pork products. The Department is not requiring or recommending new processes or equipment, but simply recognizing that some firms may wish to use new technologies to improve control of their production process and/or change their product mix and niche in the market.

Two commenters expressed concern over the new rule's effect on the demand for pork. One of the two commenters observed that no demand had been proven for the "new" products, while the other said that the demand for pork would be reduced due to the extra water that can be added.

With respect to the impact of new products on the demand for pork, the Department would point out that it is only complying with industry's requests for the opportunity to produce and market a wider variety of cured pork products. The Department is not opposed to new products in the marketplace as long as those products are wholesome, properly marked, labeled, and packaged and not adulterated. Further, the Department does not see a reduced demand for pork as an inevitable outcome of this regulation. The new products may, in fact, be additions to household purchases or they might replace other meat (beef, mutton, poultry), seafood, or other foods with relatively high protein content.

One commenter stated that the rule would cause companies to reduce yield, thereby suffering a financial loss. The Department appreciates this concern but was unable to find any way to substantiate the perceived loss. A question of involuntary yield reduction could occur if a processor is currently producing cured pork products which just barely meet, or fail to meet, the standards of acceptability under the

present moisture protein standards and will have to lower its yield to comply under the new rule where the compliance test is more accurate. But, the new rule is not prohibiting the manufacture of any variety of cured pork product. It is revising existing standards and specifying labeling requirements. Therefore, any increased costs would be attributable to a firm's own marketing decisions to either continue production of the lower protein cured pork products or reduce yield so as to meet a different PFF requirement level.

Another commenter said that the new rule was not a minor rule as defined by Executive Order 12291. The Department has, as indicated above, considered the new rule's potential impacts on the economy and found that it will not have an impact which would be considered major under the provisions of Executive Order 12291. The Department is not prohibiting the production of any product or requiring equipment purchases or major procedural changes. It is simply updating the standards for cured pork products and improving the compliance procedures used to assure conformance with the new provisions.

Similarly, the U.S. Government Small Business Administration (SBA) commented on the proposal and questioned its potential impact on small businesses. The Department has reconsidered the economic impacts of the rule based on these concerns and again concluded, for the reasons expressed above, that it will not have a significant impact on a substantial number of small entities. Further information concerning the rule's effect on small entities may be found in the Department's review of the need for a Regulatory Flexibility Analysis, which is published as an appendix to this rule.

SBA's comment also expressed some concern over the sampling and enforcement provisions stated in the proposed rule. The Department wishes to point out that these provisions are not new or unique to this rule. The Department already has the authority to take samples and to take certain action to enforce compliance with the law. These items were included in the proposal as a matter of information; i.e., a restatement of the Department's existing authority and notice to the public.

Additionally, it should be noted that the new rule has several inherent flexibilities which the Department believes will moderate any burden on small entities. For example, the new rule permits considerable latitude in the quantity and frequency of samples to be collected, provides simple formulae for

the calculation of current product variability and allows firms to make their own market based decisions on what to produce. Also, the new rule will become effective 1 year after publication to provide a phase-in period where both the added water system and the PFF system will be monitored simultaneously. The added water system, however, will determine compliance until the effective date of the PFF system. This overlapping introductory period will give processors ample opportunity to judge the acceptability of their current process in terms of the new standards. Then, if small processors feel a need to change labels or seek approval of quality control systems, they may do so. If the need exists and a request is made, the Department is in a position to offer technical assistance to plants in writing quality control programs which meet the needs of both the plant and the regulation.

Two commenters said that the rule regulates industry competition, which is not a function of the Department, and that packers are being overregulated. One of the objectives of this rulemaking is to introduce some aspects of deregulation while maintaining statutory obligations to assure consumers that the meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. The Department has no authority to regulate the meat industry to promote competition, although its regulations may have indirect effects on competition. In this case, the Department believes that the new rule will accomplish its objective of protecting the consumer without imposing undue or significant economic burdens on any segment of the economy.

Implementation

The implementation of this rule was the subject of several comments. Most of the comments expressed concern that the PFF compliance system was something new and radically different than what the industry has been operating under in the past. In total, 20 commenters offered suggestions about implementation.

One commenter said that there was not enough opportunity to present evidence of potential harm by the proposal, and that a hearing should be held before adoption of the proposal as a final rule to allow such opportunity. The Department has chosen not to hold public hearings on the regulation. Unnecessarily delaying adoption of the new rules would postpone correction of serious problems with the present enforcement practices and perpetuate

economic harm to consumers and the industry. Careful analysis of the comments submitted indicates that the relevant concerns of both the industry and the consumers have been brought to the Department's attention. The Department is, therefore, obligated to proceed with the publication of this rule in the interest of timely consumer protection.

Two comments requested the Department to issue an interim final regulation thus giving time for industry to become acquainted with the new regulation, and to make whatever production adjustments that might be appropriate. Nine others proposed that an industry/Department task force be established to study the issue before a regulation is implemented.

The Department agrees that industry will need time to become acquainted with the regulation and evaluate production in relation to its new features. To facilitate that purpose and to provide the Department sufficient opportunity to train its own personnel, the effective date is delayed. Prior to that date, the Department will organize and conduct, and/or contract for others to conduct, orientation seminars at strategic locations around the country for interested processors. The Department will shortly invite a representative from each of the major meat trade associations to assist in this orientation effort. In addition, special training material will be provided to the Department's own personnel. Finally, as earlier noted, for a period of time before the effective date, the Department will conduct a test run of the compliance monitoring system, including information feedback to processors and inspectors. During the test period, processors may expect to have samples of their products taken, as is currently done, except that the inspectors will be directed to randomly select their samples instead of using biased sampling. The samples will be forwarded for analysis as usual. The analytical results will be used to determine the product's compliance with the present added water/added substance regulations, and will also be used to determine if the product is in compliance with this rule. Both sets of results will be forwarded to the firm through the inspector and shared with the firm. In this manner, the processor and the Department will be able to note any potential problems and correct them without fear of any repercussions based on the new rules.

Miscellaneous

This topic includes discussion of comments which did not fit other topic headings, and includes a change and several clarifications by the Department.

Some of the comments included:

- (a) Warning consumers about the salt content of cured products, and labeling products as to their nutrient content,
- (b) Labeling pork raised in confinement, and
- (c) Providing consumers information about PFF and the "non-traditional" products.

Each of the above items is discussed separately.

(a) The Department's Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) recognize the public concern over the amount of sodium in food, and worked together on a public information and education program acquainting consumers with the potential hazards of excessive sodium intake. Almost a million copies were distributed of the 1982 brochure, "Sodium: Think About It," and 7 million copies of the 1980 brochure, "Nutrition and Your Health—Dietary Guideline for Americans," both jointly produced. In 1982, FSIS released two public service announcements for television on reduction of sodium intake, and two for radio, directed to the black population and focusing on the link between sodium intake and high blood pressure. FSIS also uses bus posters to call attention to excessive sodium consumption.

FSIS encourages industry to increase sodium labeling and the marketing of meat and poultry products with lower sodium content. At present, FSIS requires sodium labeling only on meat and poultry products that make specific nutritional claims, such as "low-sodium." An increasing number of food processors show the level of sodium and other nutrients in their product labeling. To date, approximately 100 meat and poultry processors have started voluntary sodium labeling. This is reflected in over 3,000 products now on grocery shelves.

Research is also a part of the sodium program. FSIS began monitoring the sodium content of meat and poultry products in May 1982, to determine progress in voluntary sodium reduction efforts. The Department's Agricultural Research Service is working to see how the sodium content of processed meat and poultry products can be reduced while maintaining product safety and quality.

The Department also formed a task force to make recommendations on sodium policy, and the task force works

closely with industry and other Government agencies on sodium issues. While the Department has concluded that a concern with sodium is outside the scope of this rulemaking, it will continue broad based efforts to encourage voluntary labeling for all products under its jurisdiction.

Finally, the Department wishes to point out that a voluntary nutrition labeling program is in place and covers a large variety of processed meat and poultry products. Some 310 companies have approximately 8,000 approved labels which convey nutrition information to the public. These labels can be found on such foods as soups, cooked sausages, pizzas, cured pork products, luncheon meats, frozen dinners and other convenience items.

(b) Slaughterers have no way of knowing whether hogs were raised in confinement; many hogs are marketed through public auctions, and brokers do not know their origin. The Department has concluded that this concern is also outside the scope of this final rule.

(c) The Department appreciates this concern and will develop a public information campaign on those cured pork products that would be subject to the new regulations. Such a campaign must acquaint the consumer with the standards for various pork products that would be permitted under the proposal—so that an informed choice may be made from the many pork products available. This information could be made available in the format of the popular FSIS publication, "Meat and Poultry Products—A Consumer Guide to Content and Labeling Requirements." Feature articles distributed to food editors could also provide this information.

Two commenters claimed that the rule would require farmers to keep hogs in the feedlot and on feed longer in order to increase the protein content. No evidence was submitted to demonstrate that longer feeding would produce proportionately higher protein levels in the muscle tissue of swine. The Department is not aware of significant differences with longer feeding periods.

Another commenter indicated that trichinae control was not considered in the proposal, or incorporates an erroneous exemption for trichinae control. There is nothing in the proposal exempting pork products from the existing requirements for trichinae treatment. The Department will continue to enforce the provisions of 9 CFR 318.10. Those requirements are that pork products and processed products containing pork which might be eaten without adequate cooking be treated by an approved method in order to destroy

any possible live trichinae. The certification requirements for cooking will remain the same. However, a proposal now under review may alter the freezing and curing requirements.

One commenter stated that at some future time the phosphorus content of meat products (and presumably poultry products) might need to be controlled; thus, the abbreviation "PFF" should be "PRFF" since "P" is the chemical symbol for phosphorus. It is true that the letter "P" is the official chemical symbol for phosphorus, and is therefore used to indicate the presence of the element. If is also true, however, that in the food science area, the letter "P" is a commonly used abbreviation for protein. For example, "M/P ratio" refers to the proportion of moisture to protein. Use of one letter of the alphabet for various purposes is not unusual. Moreover, the meaning of the term "PFF" has been established in the meat science community as that of protein content on a fat free basis. The Codex Alimentarius Commission has used the term for several years. It also appears, based on the comments received from processors and consumers in response to the proposed rule on this subject, that everyone understood the use of the term to mean protein fat-free. Based on these considerations, the Department is retaining the term "PFF" as proposed.

Three commenters said "water activity" would increase in the "non-traditional" product as a result of reduced sweetener content while retaining higher water content. That would result in a shorter shelf life than would otherwise be experienced. However, except for product safety concerns, the Department's policy is to leave shelf life a function of the industry. This policy has resulted in the availability of a wide variety of products with differing water activities being available to the consumer and increasing the consumers choices. If data become available which give an indication that this higher water activity product is potentially hazardous to the public health, the Department will proceed with regulations to correct whatever problems exist.

Three comments said the product labeled "Turkey Ham, Cured Turkey Thigh Meat" should have minimum PFF values established and be regulated on the same basis as cured pork products. One comment said such turkey products should not be regulated on that basis. Another comment was that all processed meats should ultimately be covered by PFF. While the Department recognizes that covering turkey products and other processed meats in a similar

manner may have merit, inclusion in this rule would be inappropriate, due to the lack of opportunity for many affected parties to state their view. Rulemaking to effect such a system for all processed meats may be considered in the future.

Summary of Changes From the Proposal

The significant changes in this rule in comparison to the proposal are briefly summarized in this section.

1. Section 318.19(a)(2) has been changed to clarify the definition of each Group. Group V of the proposal has been eliminated.

2. The definition of Protein Fat Free percentage (PFF) in § 318.19(a)(5) has been changed to clarify that it includes only the meat protein content indigenous to the raw, unprocessed pork cut and, therefore, excludes all other proteins.

3. The calculations of PFF values, § 318.19(b)(1) through § 318.19(c)(2)(vii), remain unchanged, but a footnote has been added to § 318.19(b) which includes the rules for rounding data and reporting data.

4. Section 318.19(b)(1)(ii) has been changed to recognize slightly larger variability for Groups I through IV. In addition, the Roman numeral designation for those Groups has changed. Group V has been eliminated. (The rules for retention based on violation of the Absolute Minimum have not changed.)

5. The compliance procedures during product retention in § 318.19(c) have been changed to allow individual processors to propose alternate sampling plans to determine the lot average PFF. The Administrator will approve an alternative plan when it has been demonstrated to be at least as effective as the plan included in this rule.

6. Section 319.104(a) has been changed to delete ham patties from the table and § 319.105(a) has been changed to include ham patties in that table. This change was made since the PFF standard for ham patties coincides with the standards for chopped, pressed, and spiced ham. Both sections have been changed to reflect the required labeling of certain products. Products with less PFF than required ("non-traditional") and therefore labeled with a qualifying statement, shall have the amount of added ingredients stated as a percent of finished product weight rather than as a percent of the raw, unprocessed weight.

7. The standard for ham patties has been revised downward to reflect additional data on these products. Section 319.105 had been changed to include a paragraph (e) limiting "ham

patties" to no more than 35 percent fat by analysis.

8. One change in codification and several clarifications have been made in the rule which were not the result of comments but were found as a part of the Department's evaluation. Those are as follows:

a. The requirement for bacon, proposed to be codified in § 317.8(b)(35), is codified instead in § 319.107 because it is a standard and is properly the subject of Part 319. No change in meaning occurs.

b. Section 318.19(a)(5) was changed to include the term "PFF" to clarify that it has the same meaning in this section as it does in § 319.104.

c. In § 318.19(e) on quality control, language has been inserted to indicate in this section, and therefore prevent misunderstanding, that products bearing the qualifying statement "X% of Weight is Added Ingredients" must be prepared under quality control as prescribed in § 318.4. This requirement was discussed in the preamble to the proposal as well as appearing in footnote 2 to the tables in proposed §§ 319.104 and 319.105. Insertion of such language caused other wording changes in § 319.18(e) but caused no change in meaning from the proposal.

d. A footnote has been added to the chart in § 319.104 to indicate that the term "cooked" is used as a term of art and not a definition to make it clear that product heated to 137° F for destruction of possible live trichinae cannot be labeled "cooked" because the term appears in that section.

List of Subjects

9 CFR Part 318

Incorporation by reference, Meat inspection, Preparation of product.

9 CFR Part 319

Meat inspection, Food labeling, Meat and meat food products.

This final rule promulgates the provisions of the proposal as modified and described in the preamble. Accordingly, the Federal meat inspection regulations (9 CFR Parts 318 and 319) are amended as follows:

1. The authority citation for Parts 318 and 319 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438, 21 U.S.C. 601 *et seq.*, 33 U.S.C. 1254.

PART 318—[AMENDED]

2. Part 318 (9 CFR Part 318) is amended by adding a new § 318.19 as follows:

§ 318.19 Compliance procedure for cured pork products.

(a) *Definitions.* For the purposes of this section:

(1) A *product* is that cured pork article which is contained within one *Group* as defined in paragraph (a)(2) of this section and which purports to meet the criteria for a single product designated under the heading "Product Name and Qualifying Statements" in the chart in § 319.104 or the chart in § 319.105.

(2) A *Product Group* or a *Group* means one of the following:

Group I, consisting of cured pork products which have been cooked while imperviously encased. Any product which fits into the Group will be placed in this Group regardless of any other considerations.

Group II, consisting of cured pork products which have been water cooked. Any product which does not fit into Group I but does fit into Group II will be placed into Group II regardless of any other considerations.

Group III, consisting of boneless smokehouse heated cured pork products. Any boneless product that does not fit into Group I or Group II shall be placed in Group III.

Group IV, consisting of bone-in or semi-boneless smokehouse heated cured pork products. Any product that is not completely boneless or still contains all the bone which is traditional for bone-in product, and does not fit into Group I, Group II, or Group III shall be placed in this Group.

(3) A *lot* is that product from one production shift.

(4) A *production rate* is frequency of production, expressed in days per week.

(5) *Protein fat free percentage, protein fat free content, PFF percentage, PFF content or PFF* of a product means the meat protein (indigenous to the raw, unprocessed pork cut) content expressed as a percent of the non-fat portion of the finished product.

(b) *Normal Compliance Procedures.* The Department shall collect samples of cured pork products and analyze them for their PFF content.¹ Each analytical result shall be recorded and evaluated to determine whether future sampling of product Groups within an official establishment shall be periodic or daily under the provisions of paragraph (b)(1) of this section, and if the affected lot and subsequent production of like product shall be U.S. retained, or administratively detained, as appropriate, as provided in paragraph (b)(2) of this section.²

¹ Analyses shall be conducted in accordance with "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)", 13th ed., 1980, §§ 24.002 (page 376), 24.027 (page 379), which are incorporated by reference.

² Rules for Rounding:

Continued

(1) *Criteria to determine sampling frequency of Product Groups.* For each official plant preparing cured pork products, Product Groups shall be sampled periodically or daily. Analytical results shall be evaluated and the sampling frequency determined as follows:

(i) Determine the difference between the individual PFF analysis and the applicable minimum PFF percentage requirement of § 319.104 or § 319.105. The resulting figure shall be negative when the individual sample result is less than the applicable minimum PFF percentage requirement and shall be positive when the individual sample result is greater than the applicable minimum PFF percentage requirement.

(ii) Divide the resulting number by the standard deviation assigned to the Product Group represented by the sample to find the Standardized Difference. The standard deviation assigned to Groups I and II is 0.75 and to Groups III and IV is 0.91.

(iii) Add 0.25 to the Standardized Difference to find the Adjusted Standardized Difference.

(iv) Use the lesser of 1.90 and the Adjusted Standardized Difference as the Sample Value.

(v) Cumulatively total Sample Values to determine the Group Value. The first Sample Value in a Group shall be the Group Value, and each succeeding Group Value shall be determined by adding the most recent Sample Value to the existing Group Value; provided, however, that in no event shall the Group Value exceed 1.00. When calculation of a Group Value results in a figure greater than 1.00, the Group Value shall be 1.00 and all previous Sample

Values shall be ignored in determining future Group Values.

(vi) The frequency of sampling of a Group shall be periodic when the Group Value is greater than -1.40 (e.g., -1.39, -1.14, 0, 0.50, etc.) and shall be daily when the Group Value is -1.40 or less (e.g., -1.40, -1.45, -1.50, etc.); provided, however, that once daily sampling has been initiated, it shall continue until the Group Value is 0.00 or greater, and each of the last seven Sample Values is -1.65 or greater (e.g., -1.63, -1.50, etc.), and there is no other product within the affected Group being U.S. retained as produced, under provisions of paragraph (b)(2) or (c).

(2) *Criteria for U.S. retention or administrative detention of cured pork products for further analysis.* Cured pork products shall be U.S. retained, or administratively detained, as appropriate, when prescribed by paragraphs (b)(2) (i) or (ii) of this section as follows:

(i) *Absolute Minimum PFF Requirement.* In the event that an analysis of an individual sample indicates a PFF content below the applicable minimum requirement of § 319.104 or § 319.105 by 2.3 or more percentage points for a Group I or II product, or 2.7 or more percentage points for a Group III or IV product, the lot from which the sample was collected shall be U.S. retained if in an official establishment and shall be subject to administrative detention if not in an official establishment unless returned to an official establishment and there U.S. retained. Any subsequently produced lots of like product and any lots of like product for which production dates cannot be established shall be U.S. retained or subject to administrative detention. Such administratively detained product shall be handled in accordance with Part 329 of this subchapter, or shall be returned to an official establishment and subjected to the provisions of paragraph (c)(1) (i) or (ii) of this section, or shall be relabeled in compliance with the applicable standard, under the supervision of a program employee, at the expense of the product owner. Disposition of such U.S. retained product shall be in accordance with paragraph (c) of this section.

(ii) *Product Value requirement.* The Department shall maintain, for each product prepared in an official establishment, a Product Value. Except as provided in paragraph (c)(2) of this section, calculation of the Product Value and its use to determine if a product shall be U.S. retained shall be as follows:

(A) Determine the difference between the individual PFF analysis and applicable minimum PFF percentage requirement of § 319.104 and § 319.105. The resulting figure shall be negative when the individual sample result is less than the applicable minimum PFF percentage requirement and shall be positive when the individual sample result is greater than the applicable minimum PFF percentage requirement.

(B) Divide the difference determined in paragraph (b)(2)(i)(A) of this section by the standard deviation assigned to the product's Group in paragraph (b)(1)(ii) of this section to find the standardized difference.

(C) Use the lesser of 1.65 and the standardized difference as the Sample Value.

(D) Cumulatively total Sample Values to determine the Product Value. The first Sample Value of a product shall be the Product Value, and each succeeding Product Value shall be determined by adding the most recent Sample Value to the existing Product Value; provided, however, that in no event shall the Product Value exceed 1.15. When calculation of a Product Value results in a figure greater than 1.15, the Product Value shall be 1.15, and all previous Sample Values shall be ignored in determining future Product Values.

(E) Provided daily group sampling is in effect pursuant to the provisions of paragraph (b)(1) of this section, and provided further the Product Value is -1.65 or less (e.g., -1.66), the affected lot (if within the official establishment) and all subsequent lots of like product prepared by and still within the official establishment shall be U.S. retained and further evaluated under paragraph (c) of this section. Except for release of individual lot pursuant to paragraph (c)(1), subsequently produced lots of like product shall continue to be U.S. retained until discontinued pursuant to paragraph (c)(2) of this section.

(c) *Compliance procedure during product retention.* When a product lot is U.S. retained under the provisions of paragraph (b)(2) of this section, the Department shall collect three randomly selected samples from each such lot and analyze them individually for PFF content. The PFF content of the three samples shall be evaluated to determine disposition of the lot as provided in paragraph (c)(1) of this section and the action to be taken on subsequently produced lots of like product as provided in paragraph (c)(2) of this section.

(1) A product lot which is U.S. retained under the provisions of paragraph (b)(2) of this section may be

1. Laboratory results for percent meat protein and fat will be reported to the second decimal place (hundredths).

2. PFF and Sample Values for charting purposes will be calculated from the reported laboratory results to the second decimal place. Rounding of calculations to reach two decimal places will be done by the following rule:

All values of five-thousandths (0.005) or more will be rounded up to the next highest hundredth. All values of less than five-thousandths (0.005) will be dropped.

3. For compliance with the Absolute Minimum PFF requirements, the PFF will be rounded to the first decimal place (tenths). Rounding of calculations to reach one decimal place will be done by the following rule:

All PFF values of five-hundredths (0.05) or more will be rounded up to the next highest tenth. All PFF values of less than five-hundredths (0.05) will be dropped.

4. For product disposition (pass-fail of a minimum PFF standard for retained product) the average PFF calculation will be rounded to the first decimal place. Individual PFF Values will be calculated to the nearest hundredth as in (2) above. The average, however, will be rounded to the nearest tenth as in (3) above.

released for entry into commerce provided one of the following conditions is met:

(i) The average PFF content of the three samples randomly selected from the lot is equal to or greater than the applicable minimum PFF percentage required by § 319.104 or § 319.105. Further processing to remove moisture for the purpose of meeting this provision is permissible. In lieu of further analysis to determine the effects of such processing, each 0.37 percent weight reduction due to moisture loss resulting from the processing may be considered the equivalent of a 0.1 percent PFF gain.

(ii) The lot of the product is relabeled to conform to the provisions of § 319.104 or § 319.105, under the supervision of a program employee.

(iii) The lot is one that has been prepared subsequent to preparation of the lot which, under the provisions of paragraph (c)(2) of this section, resulted in discontinuance of U.S. retention of new lots of like product. Such lot may be released for entry into commerce prior to receipt of analytical results for which sampling has been conducted. Upon receipt of such results, they shall be subjected to the provisions of paragraphs (b)(2)(i) and (c)(2) of this section.

(2) The PFF content of three randomly selected samples from each U.S. retained lot shall be used to maintain the Product Value described in paragraph (c)(2)(ii). The manner and effect of such maintenance shall be as follows: (i) Find the average PFF content of the three samples.

(ii) Determine the difference between that average and the applicable minimum PFF percentage requirement of § 319.104 or § 319.105. The resulting figure shall be negative when the average of the sample results is less than the applicable minimum PFF percentage requirement and shall be positive when the average of the sample results is greater than the applicable minimum PFF requirements.

(iii) Divide the resulting figure by the standard deviation assigned to the product's Group in paragraph (b)(1)(ii) of this section, to find the standardized difference.

(iv) Use the lesser of 1.30 and the standardized difference as the Sample Value.

(v) Add the first Sample Value thus calculated to the latest Product Value calculated under the provisions of paragraph (c)(2)(ii) of this section to find the new Product Value. To find each succeeding Product Value, add the most recent Sample Value to the existing Product Value; provided, however, that in no event shall the Product Value

exceed 1.15. When the addition of a Sample Value to an existing Product Value results in a figure greater than 1.15, the Product Value shall be 1.15 and all previous Sample Values shall be ignored in determining future Product Values.

(vi) New lots of like product shall continue to be retained pending disposition in accordance with paragraph (c)(1) of this section until, after 5 days of production, the Product Value is 0.00 or greater, and the PFF content of no individual sample from a U.S. retained lot is less than the Absolute Minimum PFF requirement specified in paragraph (b)(2)(i) of this section. Should an individual sample fail to meet its Absolute Minimum PFF requirement, the 5-day count shall begin anew.

(vii) When U.S. retention of new lots is discontinued under the above provisions, maintenance of the Product Value shall revert to the provisions of paragraph (b)(2)(ii) of this section.

(3) For purposes of this section, the plant owner or operator shall have the option of temporarily removing a product from its Product Group, provided product lots are being U.S. retained, as produced, and provided further that the average production rate of the product, over the 8-week period preceding the week in which the first U.S. retained lot was prepared, is not greater than 20 percent of the production rate of its Group. When a product is thus removed from its Group, analytical results of product samples shall not cause daily sampling of the Group. When pursuant to paragraph (c)(2)(vi) of this section, new lots of the product are no longer being U.S. retained, the product shall again be considered with its Group.

(d) *Adulterated and misbranded products.* Products not meeting specified PFF requirements, determined according to procedures set forth in this section, may be deemed adulterated under section 1(m)(8) of the Act (21 U.S.C. 601(m)(8)) and misbranded under section 1(n) of the Act (21 U.S.C. 601(n)).

(e) *Quality control.* Cured pork products bearing on their labeling the statement "X% of Weight is Added Ingredients" shall be prepared only under a total quality control system or partial quality control program in accordance with § 318.4 of this subchapter. With respect to any other cured pork product, official establishments may institute quality control procedures under § 318.4 of this subchapter. Cured pork products produced in such establishments may be exempt from the requirements of this section, provided implant quality control

procedures are shown to attain the same or higher degree of compliance as the procedures set forth in this section; provided, however, that all cured pork products produced shall be subject to the applicable Absolute Minimum PFF content requirement, regardless of any quality control procedures in effect.

PART 319—[AMENDED]

3. Section 319.104 (9 CFR 319.104) is revised to read as follows:

§ 319.104 Cured pork products.

(a) Cured pork products, including hams, shoulders, picnics, butts and loins, shall comply with the minimum meat Protein Fat Free (PFF) percentage requirements set forth in the following chart:

Type of cured pork product	Minimum meat PFF percentage ¹	Product name and qualifying statements
Cooked ham, loin ² .	20.5	(Common and usual).
	18.5	(Common and usual) with natural juices.
	17.0	(Common and usual) water added.
Cooked shoulder, butt, picnic ² .	<17.0	(Common and usual) and water product—X% of weight is added ingredients. ³
	20.0	(Common and usual).
	18.0	(Common and usual) with natural juices.
Uncooked cured ham, loin.	16.5	(Common and usual) water added.
	<16.5	(Common and usual) and water product—X% of weight is added ingredients. ³
	18.0	Uncooked (common and usual).
Uncooked cured shoulder, butt, picnic.	<18.0	Uncooked (common and usual) and water product—X% of weight is added ingredients. ³
	17.5	Uncooked (common and usual).
	<17.5	Uncooked (common and usual) and water product—X% of weight is added ingredients. ³

¹ The minimum meat PFF percentage shall be the minimum meat protein which is indigenous to the raw, unprocessed pork expressed as a percent of the non-fat portion of the finished product; and compliance shall be determined under § 318.19 of this subchapter.

² The term "cooked" is not appropriate for use on labels of cured pork products heated only for the purpose of destruction of possible live trichinae.

³ Processors may immediately follow this qualifying statement with a list of the ingredients in descending order of predominance rather than having the traditional ingredients statement. In any case, the maximum percent of added substances in the finished product on a total weight percentage basis would be inserted as the X value; e.g., Ham and Water Product—20% of Weight is Added Ingredients. A prerequisite for label approval of these products is a quality control program approved by the Administrator under § 318.4 of this subchapter.

(b) Cured pork products for which there is a qualifying statement required in paragraph (a) of this section shall bear that statement as part of the product name in lettering not less than 3/8 inch in height. However, the Administrator may approve smaller lettering for labeling of packages of 1

pound or less, provided such lettering is at least one-third the size and of the same color and style as the product name. If the cured pork product is not placed in a consumer-size package and labeled in accordance with all other provisions of this Part, such product shall be marked with the qualifying statement the full length of the product.

(c) Cured pork product prepared pursuant to this section shall be subject to the compliance procedures in § 318.19 of this subchapter.

4. Section 319.105 (9 CFR 319.105) is revised to read as follows:

§ 319.105 "Ham patties," "Chopped ham," "Pressed ham," "Spiced ham," and similar products.

(a) Finely divided (chopped, ground, flaked, chipped) cured ham products such as "Ham patties," "Chopped ham," "Pressed ham," and "Spiced ham" shall comply with minimum meat Protein Fat Free (PFF) percentage requirements set forth in the following chart:

Type of cured pork product	Minimum meat PFF percentage ¹	Product name and qualifying statements
"Ham Patties," "Chopped Ham," "Pressed Ham," and "Spiced Ham"	19.5	(Common and usual).
"Ham Patties," "Chopped Ham," "Pressed Ham," and "Spiced Ham"	17.5	(Common and usual) with natural juices.
"Ham Patties," "Chopped Ham," "Pressed Ham," and "Spiced Ham"	16.0	(Common and usual) water added.
"Ham Patties," "Chopped Ham," "Pressed Ham," and "Spiced Ham"	< 16.0	(Common and usual) and water product—(x)% of weight is added ingredients. ²

¹ The minimum meat PFF percentage shall be the minimum meat protein which is indigenous to the raw, unprocessed pork expressed as a percent of the nonfat portion of the finished product; and compliance shall be determined under section 318.19 of this subchapter.

² Processors may immediately follow this qualifying statement with a list of the ingredients in descending order of predominance rather than having the traditional ingredients statement. In any case, the maximum percent of added substances in the finished product on a total weight percentage basis would be inserted as the X value, e.g., Ham and Water Product—20% of Weight is Added Ingredients. A prerequisite for label approval of these products is a quality control program approved by the Administrator under § 318.4 of this subchapter.

(b) Cured pork products prepared under this section except "Ham patties" may contain finely chopped ham shank meat to the extent of 25 percent over that normally present in boneless ham. Mechanically Separated (Species) Product may be used in accordance with § 319.6.

(c) Cured pork product prepared pursuant to this section shall be subject to the compliance procedures in § 318.19

of this subchapter, and those cured pork products prepared under this section for which there is a qualifying statement required shall comply with the requirements of § 319.104(b) of this subchapter.

(d) In addition to the other requirements of this section, "Chopped Ham" may contain up to 2 percent, on a dry basis, of sweetener solid or liquid, such as corn syrup solids or corn syrup.

(e) In addition to the other requirements of this section, "Ham Patties" may not contain more than 35 percent fat, by analysis.

5. A new § 319.107 is added to Subpart D to read as follows:

§ 319.107 Bacon.

The weight of cured pork bellies ready for slicing and labeling as "Bacon" shall not exceed the weight of the fresh uncured pork bellies.

Done at Washington, DC, on: March 14, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

Appendix A—Discussion of the Need for a Regulatory Flexibility Analysis

SUBJECT REGULATION

Control of Added Substances and Labeling Requirements for Cured Pork Products.

PURPOSE OF THIS PAPER

The Regulatory Flexibility Act (Pub. L. 96-354) requires a regulatory flexibility analysis for rules that would have a significant impact on a substantial number of small entities. The purpose of this paper is to review the need for a regulatory flexibility analysis as part of the current rulemaking. The Department has determined that for this rule, small entities refers to the small businesses that produce the cured pork products covered by the rule. No impacts on other small entities, such as governmental bodies or other organizations, are discernible. The paper describes the impact of the new rule on the small manufacturers of cured pork products and also identifies alternatives which were considered during the regulatory development process.

The analysis is organized to include the components described in Sections 603 and 604 of the Regulatory Flexibility Act. Information provided in the preamble of this final rule will not be repeated, in detail, in this analysis. The overall approach in the analysis has been to establish limits on potential costs. In some cases, these limits are based on worst case assumptions that lead to cost estimates which are substantially higher than those actually anticipated.

I. Reasons for Action and Statement of Objectives

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq*) directs the Secretary of

Agriculture to administer meat inspection in a manner which will assure consumers that meat products distributed to them are wholesome, properly marked, labeled, packaged and not adulterated. In accordance with that charge the Department has chosen to establish new standards and labeling requirements for cured pork products. These changes were brought about by three different events.

The first and primary event was the Department's recognition that the current compliance procedures were ineffective and outmoded due to significant technological advances in the preparation of cured pork products. This recognition was substantiated in a report issued by the Department's Inspector General on October 27, 1980. In brief, the report criticized the current procedures for enforcing the standards for cured pork products contained in section 319.104 of the Federal meat inspection regulations (9 CFR 319.104). It also recommended revising these methods and procedures to provide better regulatory control of cured pork products. A second event consisted of a series of requests by processors who wanted to capitalize on industry advances and prepare a wider variety of cured pork products containing added water. Lastly, in connection with the settlement of an administrative proceeding (*Pacific Coast Meat Association v. USDA*, (FMIA Docket No. 33, 7/11/78)), the Department agreed to institute rulemaking to cover cured pork products containing water in excess of the 10 percent limit allowed in current regulations.

The Department has, therefore, chosen to respond to the above events by amending its current regulations to include revised product standards and revised procedures for determining compliance with these requirements. The objective of the revised regulations is to implement a regulatory approach that fulfills the Department's responsibility to (1) protect the public by maintaining the quality and integrity of meat products and, (2) maintain strong markets for these products by enhancing consumer confidence. In the Department's view, this responsibility includes preventing decreases in the protein content of these products and assuring that they are uniformly and accurately labeled.

II. Products and Processors Covered by the Rule

A. Definition of Product Categories. The products covered by the new rule are the cured pork products which are processed with a water-based cure solution, i.e., hams, shoulders, loins, etc.¹ For this analysis, these

¹ It should be noted that although the majority of bacon is a water-cured pork product its unique ratio of lean meat to fat resulted in exclusion from the new rule. More specifically, the Department will continue to require that bacon not exceed its raw, uncured weight after curing and smoking. In view of this exclusion, information on bacon is intentionally omitted from this analysis. The terms "water-cured pork products", "water-cured pork production" and "water-cured pork processors" are used to refer to only the products covered by the rule or the processors of those products. The analysis also excludes data on dry cured pork products since they are not covered by the new rule.

products have been subdivided in three categories depending on the amount of water and/or other ingredients which remain in a product after the curing process has been completed. These categories are:

1. "Traditional" products—products that are now labeled with established common and usual names such as "Ham", "Pork Shoulder Picnic", or "Canned Ham".

2. "Water added" products—products that now include the term "Water Added" as part of their product name. Examples of current product name labeling for these products include "Ham, Water Added" and "Pork Shoulder Picnic, Water Added".

3. "X percent water added" products—products now labeled to reflect the actual percentage of added water content, e.g., "Ham and X percent water added," where the "X" represents the actual percentage of added water in the product. The production and distribution of these products was permitted, on an interim basis, following the settlement of the administrative proceeding (Pacific Coast Meat Association) in 1978.

This analysis will also use the term "non-traditional" products as it is defined in the preamble to this final rule. "Non-traditional" products include all of the "X percent water added" products and the portion of "water added" products that contains either levels of non-meat solids in excess of those normally found in cured pork products or levels of added water close to or at the upper limits used in existing compliance procedures for single sample results.

Chart 1 has been included to illustrate the different product categories defined above. The new rule is expected to have the most impact on the two groups of products that make up "non-traditional" products. The Department recognizes that either the composition or the labeling of these products will have to be modified. The "X" percent water added" products have been formalized by this rule and have been more descriptively labeled. The rule is directed to improving compliance for the portion of "non-traditional" products that are now labeled as "water added" products.

B. *Volume of Product.* The Department collects data on the pounds of meat product inspected for approximately 100 different types of product. The existing code numbers used in collecting these data do not permit the exact identification of the pounds of product inspected for each of the three subdivisions identified above (e.g., "water added" and "X percent water added" products are reported under the same product codes). Aggregating the data in the most useful manner, Table 1 presents the pounds of water-cured pork products inspected during fiscal year 1982. Table 1 shows that "water added" and "X percent water added" products together account for approximately 68 percent of the covered products. In contrast, "traditional" products account for approximately 32 percent of the products. Because of the way the product codes are structured, Table 1 does not identify the volume of "water added," "X percent water added" or "non-traditional" products.

Chart 1

"Traditional" Products	"Water Added" Products	"X Percent Water Added" Products
Products now bearing common and usual names such as "Ham", "Canned Ham", "Cooked Ham", "Picnic", "Canned Picnic" or "Pork Shoulder Picnic".	Products now labeled as "[Common and Usual Name], Water Added".	Products now labeled as "[Common and Usual Name] and X Percent Water Added".
	← "Non-Traditional Products" →	

Note: The sum of "Traditional" and "Non-Traditional" products does not account for all products covered by the new rule.

TABLE 1.—FEDERALLY INSPECTED WATER-CURED PORK PRODUCTS PROCESSED AND CANNED; FOR FISCAL YEAR 1982¹

Product category	Pounds inspected fiscal year 1982 (1,000 pounds)	Percentage of water-cured pork products
"Traditional" products:		
Ham	323,227	13.9
Pork shoulders and loins	193,909	8.4
Canned hams	214,016	9.2
Canned pork shoulders and loins	9,318	0.4
Subtotal	740,470	31.9
"Water Added" and "X Percent Water Added" products:		
Ham, water added	1,334,302	57.5
Pork shoulders and loins, water added	243,981	10.5
Subtotal	1,578,283	68.0
Total	2,318,753	* 100.0

¹ "Statistical Summary, Federal Meat and Poultry Inspection for Fiscal Year 1982." USDA, FSIS, MIP, FSIS-14. The totals in Table 1 do not include product that is inspected as sliced or packaged product after it has already been inspected as cured pork product in the same or another federally inspected establishment.

* Rounded.

C. Value of Product. The Bureau of Labor Statistics (BLS), Department of Labor, collects and publishes average retail food prices for different categories of cured pork products. The following are annual U.S. averages for 1983:

Product	Retail price per pound
Canned ham (3 or 5 lbs.)	\$2.70
Shoulder picnic (bone in)	1.05
Ham, rump or shank half (bone in)	1.38

Since many of the products covered by the new rule are boneless or semi-boneless, an aggregate estimate of value must account for those products. Until 1982, the Agricultural Marketing Service (AMS) collected wholesale market quotes for the following three categories of product:

- Hams, bone in, water added (16–20 lbs.)
- Hams, semi-boneless, water added (14–17 lbs.)
- Hams, boneless, water added (13–17 lbs.)

Examining the AMS market data for three years (1980–1982) shows a consistent relationship of prices between categories. Using the three years of data, the following index was established:

Bone in	1.00
Semi-boneless	1.23
Boneless	1.55

The above index results in an estimated average retail price for semi-boneless hams of \$1.70 per pound (\$1.38 × 1.23) and an estimated price of \$2.14 for boneless hams (\$1.38 × 1.55). Table 2 shows that the estimated retail value for the products in Table 1 is approximately \$4 billion. This estimate is based on price data that recognizes different forms of product, e.g., canned, boneless or bone in, but does not distinguish products by content, e.g., "Ham" versus "Ham, Water Added."

D. Number of Processors. In fiscal year 1983, 1,183 federally inspected plants

reported production of one or more of the products listed in Table 1. This total does not include plants that only slice or package product that has already been inspected.

As discussed earlier, the Department has determined that the potential for economic impact is greater for those processors who currently prepare and sell products in the following "water added" and "X percent water added" product categories, which account for approximately 68 percent of all covered products (see Table 1):

TABLE 2.—ESTIMATED RETAIL VALUE OF CURED PORK PRODUCTS

Product category	Price per pound	Pounds (thousands)	Millions of dollars
Pork shoulders and loins	¹ \$1.05	437,890	\$459.8
Canned hams, shoulders and loins	² 2.70	223,334	603.0
Hams (bone in)	1.38	446,861	616.8
Hams (semi boneless)	1.70	106,003	180.2
Hams (boneless)	2.14	884,275	1,464.3
Hams, sectioned and formed	³ 1.75	420,280	735.5
Total	1.75	2,318,753	4,059.7

¹ Price for shoulder picnic (bone in) used for all shoulders and loins.

² Price for canned ham used for all canned product.

³ Weighted average price for all other categories, i.e., the product is assumed to be an average priced product.

1. Hams, Bone-in, Water Added
2. Hams, Semi-Boneless, Water Added
3. Hams, Boneless, Water Added
4. Hams, Sectioned and Formed, Water Added

5. Pork Shoulders and Loins, Water Added
The finished product weight for all products in these five categories is increased by added water and/or other added substances such as salt, sugar, phosphates and nitrite. In fiscal year 1983, a total of 540 federally inspected plants produced products in these categories.

The finished product weight for canned products is also increased by added substances. However, these products are less likely to be affected because the existing standard for these products covers all added substances and not just added water. In fiscal year 1983, 36 plants produced canned pork products covered by the new rule.

As mentioned above, the Department's data base on pounds of product inspected does not use product codes that distinguish the "X percent water added" products from the "water added" products. However, in another information system, the Department collects data on the number of approved labels for different categories of meat and poultry products. Data from this system shows that as of June 20, 1983, the Department had approved a total of 73 interim labels from eighteen different processors to use on "X percent water added" products. The Department does not obtain data on the extent to which different labels are used. Therefore, the Department does not know how much "X percent water added" product was produced by the 18 processors.

However, inspection records indicate that the eighteen processors had approximately 260 million pounds of "water added" and "X percent water added" cured pork products inspected during fiscal year 1982.

III. Nature of the Economic Impact

The Department has designed the new rule so that it will have a minimum economic impact on cured pork processors. The Department examined data from approximately 1,200 routine compliance samples to assure that the new PFF standards for the products previously codified in the regulations are mathematically equivalent to the added substance and added water requirements in the existing regulations. The existing regulations do not address the "X percent water added" products. The new rule does cover these products and establishes labeling requirements that the Department believes are more descriptive than the labeling that has been approved on an interim basis. The Department recognizes that the 18 processors that now have interim labels approved for these products will have to modify their labels in order to continue producing these products.

At the other end of the spectrum, the Department believes strongly that there will be negligible impact on the production of "traditional" products. The most uncertainty exists for the "water added" products. The current standards² limit these products to 10 percent added water. The current compliance procedures are based on results from laboratory analyses where tolerances have been established for single samples and five-sample averages based on the variability of the raw pork product and the variability in the process of producing the water-cured pork products.

The new PFF standard for "water added" products has been set so that processors who are (1) targeting their production process to meet the existing 10 percent level and, (2) are not exceeding the level of non-meat solids which are used in "traditional" cured pork products, should not have to change their processes or incur any expense to comply with the new rule. Processors who have taken advantage of the new technology that minimizes variability to target their production processes at the upper limits provided by existing compliance procedures will have to make some adjustments in their process or use the new labeling established for the "X percent water added" products. The same holds true for processors who are using relatively high levels of non-meat solids and non-meat syrups. In both of these cases, the Department considers the products to be "non-traditional" cured pork products. When the Department established the requirement of 10 percent added water, the issue of appropriate levels of non-meat solids and syrups did not exist. Although "traditional" cures would sometimes contain a relatively small amount of sweetener, regulatory limits were not placed on the quantity of salt and sugar used because it was believed that too much salt or sugar would cause the finished product to be too salty or too sweet for

² This paper uses the term "current standards" to refer to the limits that are codified in the existing regulations, e.g., 10 percent added water. "Compliance procedures" refers to the laboratory analyses and subsequent calculations that determine whether a given lot of product is in compliance with the standards.

consumer taste, i.e., salt and sugar were self-limiting in their content.

The Department recognizes that this rule may cause difficult marketing decisions in the short term for some processors. However, it is important to note that the Department is not prohibiting the manufacture of any variety of cured pork product; it is revising existing standards and specifying labeling requirements. These revised standards are necessary because new technology has made the existing standards obsolete. Because the new rule officially recognizes products previously approved on an interim basis and provides the flexibility to produce any variety of cured pork product, the rule can be viewed as deregulatory in nature. The rule responds to changing consumer demands, new processing procedures and improved production equipment by granting industry's requests to permit the sale of a broader variety of lower protein cured pork products. The Department is not requiring or recommending these new processes or equipment, but simply recognizing that some processors may wish to use the new technology to improve control of their production process and/or change their product mix and niche in the market.

In general, the potential industry benefits of the proposed standard are difficult to analyze because they involve subjective and/or intangible issues like public confidence, a product's market reputation and product and industry "goodwill." The legislative findings in section 2 of the Federal Meat Inspection Act (FMIA) contain Congress' judgment that, among other things, unwholesome, adulterated, or misbranded products destroy markets for wholesome, unadulterated, properly labeled product, and result in losses to producers and processors, as well as injury to consumers. The Department believes that by maintaining the quality and expected characteristics of meat products, the new rule can prevent an erosion of public confidence in these products and thereby protect the agricultural community by preventing damage to the markets for their products. In that sense, the Department believes that the rule will have a long-term stabilizing effect on the cured pork products industry.

The new rule could also have a positive economic impact on small businesses. Small processors could benefit from the precision of the new system because it doesn't require the Department to allow as wide a margin for "error". This factor increases economic equity among processors by effectively limiting the ability of any firm to reduce costs relative to others by simply using sophisticated equipment to maintain production at the limits of a wide "error" margin.

Finally, in the area of consumer benefits, the Department believes that the revised labeling requirements will allow consumers to make more informed purchases because the labeling will be more descriptive of the content of the different products.

IV. Small Business Definition

A majority of the 1,183 plants producing the products covered by the rule fall within Standard Industrial Classification (SIC) Codes 2011 (Meat Packing Plants) and 2013

(Sausages and other Prepared Meat Products). Based on available data the Department believes that this section of the industry follows the general structure of the meat processing industry where production is concentrated in a relatively small number of large volume processors. To illustrate approximately 15 percent of all meat processors accounted for 90 percent of the total product inspected in fiscal year 1981. Similarly, it is estimated that 13 percent of the water-cured pork processors account for 90 percent of the covered pork products.³ The overall industry is highly competitive, has very low earnings compared to other food and non-food industries and is in the midst of change as firms are seeking to gain competitive advantage through innovation and increased production efficiencies.⁴

The Department has not established a formal definition for small federally inspected meat or poultry plants. However, utilizing size categories that appear reasonable to apply in the current rulemaking, Table 3 shows the distribution by size of all federally inspected processing plants. Based on Table 3, over 71 percent of the federally inspected processing plants would be considered small or very small in terms of millions of pounds of total products inspected per year.

TABLE 3.—FEDERALLY INSPECTED PROCESSING PLANTS⁵

Plant size (millions of pounds of product inspected per year)	Number of plants	Percent of total
Very large (greater than 100).....	162	2.4
Large (13-100).....	660	9.7
Medium (3-13).....	1,128	16.5
Small (0.5-3).....	1,963	28.6
Very small (less than 0.5).....	2,936	42.8

³ Final Impact Statement for "Voluntary Meat and Poultry Plant Quality Control Systems," U.S. Department of Agriculture, August 1980.

Less than an equal share of annual production has been suggested by other agencies as a criterion to define a small business. For this regulation, with 1,183 plants and an annual inspected output of 2,318 million pounds of product, an equal share of production would be approximately 2.0 million pounds per plant (2,318,000,000 ÷ 1,183). The definition of small in Table 3 is generally consistent with the equal share concept. Finally, the U.S. Government Small Business Administration's data base for 1980 indicates that 76 percent of the meat packing, processing and retail firms are small, based on the employment of less than 500 per firm.⁶

⁵ Based on staff research conducted in 1980, 1981 and 1982.

⁶ Schnitker Associates, An Economic Analysis of the Structure of the U.S. Meat Packing Industry, prepared for American Meat Institute, November 11, 1980.

⁷ U.S. Government Small Business Administration's letter to the Administrator, Food Safety and Inspection Service concerning, Control of Aded Substances and Requirements for Cured Pork Products, April 25, 1983.

Based on the above data related to the overall meat industry and the assumption that the cured pork industry is similar in overall structure, this paper defines a small water-cured pork processor as one that has less than 3 million pounds of product inspected annually.

V. Impact on Small Business

Based on the criterion of 3 million pounds of product inspected annually, 772 (65.3 percent) of the total 1,183 plants reporting product covered by the rule in FY 1983 were small. Similarly, 232 (43 percent) of the 540 plants producing either "water added" or "X percent water added" products are small. Finally, the Department's FY 1982 records indicate that two of the eighteen processors that have interim labels approved to produce "X percent water added" products were small. FY 1983 records indicate that only one of these eighteen processors is currently a small business as defined by this analysis.

The next section of this paper is from an analysis of industry concentration that was conducted during 1981. That analysis was based on a November 1981 estimate that there were 1,181 plants producing products covered by the new rule. The 1981 analysis refers to categories such as "the smallest 1,023 plants" or "the largest 10 plants." Although the dividing lines used to define these groupings are no longer available, the analysis is included because it provides valuable information on the structure of the water-cured pork industry.

The rule's impact on a plant will be related to the nature of each plant's production of covered products, i.e., the volume of covered product produced by each plant and the ratio of that level to total plant proportion. Tables 4 and 5 indicate production concentration and the production of plant output allocated to the covered products. Table 4 shows that the output of the 1,023 smallest plants is approximately 10 percent of the industry's water-cured pork production. This production has an estimated retail value of \$406 million (10 percent of the total in Table 2). The data in Table 5 illustrate the level of dependency of various smaller plants on the covered products.

TABLE 4.—CONCENTRATION OF INSPECTED PRODUCTION WATER-CURED PORK PRODUCTS

Category of plant by size ¹	Percentage of affected plants	Percentage of inspected water-cured pork product	Cumulative percentage of inspected product
Top 20.....	2	33	33
Next 130.....	12	57	90
Smallest 1,023.....	86	10	100
Total 1,181.....	100	100	100

¹ Measure of size is the total volume of all meat products inspected in these plants.

The top two categories listed in Table 4 account for 158 plants. These are the largest processors of the products covered by the rule. They allocate an average of 25 percent of their total production to water-cured pork products. Table 5 illustrates the various levels of smaller plant production allocated

to the covered products. For example, it points out that only 15 percent (154) of the smallest 1,023 cured pork processors have 50 percent or more of their production committed to water-cured pork products. Table 5 also indicates that over 60 percent (614) of the smallest cured pork processors have less than 10 percent of their output allocated to the covered products.

TABLE 5.—SMALL PLANT RESOURCES UTILIZED TO PRODUCE WATER-CURED PORK PRODUCTS

Number of plants	Percentage of the 1,023 small plants	Percentage of plant production allocated to water-cured pork products
154	15	More than 50.
255	25	More than 10, less than 50.
614	60	Less than 10.
1,023	100	

Based on the above information, the Department has identified several findings and/or conclusions concerning the number of small plants that will be affected by the new rule and the likelihood that different categories of small plants will incur some increased costs. These findings/conclusions are:

- The smallest 1,023 plants (86 percent of total plants) account for approximately 10 percent of the product covered by the rule.
- The majority of the smaller plants (614 out of 1,023) in the affected sector of the meat industry have less than 10 percent of their product covered by the rule and should, therefore, experience minimal impacts.
- Only 30 percent of the smaller plants (232 out of 772) are producing products in the five product categories where the potential for adverse impact is most likely. Over 85 percent of all affected plants are small; 43 percent of plants producing those five categories of product are small.
- The 154 (15 percent) smaller plants that have more than half of their inspected product covered by the rule are the small businesses most likely to be adversely impacted, particularly if these 154 smaller plants belong to the group of 232 small plants producing "water added" or "X percent water added" products.
- The 18 processors that now produce "X percent water added" products have the highest probability of facing increased costs because they will have to change either product formulation or product labeling. Only 1 of these 18 processors is small by virtue of an annual fiscal year 1983 inspected output of under 3 million pounds.

VI. Analysis of Costs

This paper has identified four categories of costs that may be associated with the new rule. These are:

- Costs of hiring technical consultants.
- Labeling costs.
- Costs associated with partial quality control (PQC) programs.
- Costs associated with changes in ingredients or changes in processing procedures.

Where possible these costs will be related to small businesses based on the findings/

conclusions identified above. Before discussing these costs, the following three points are made in order to put these costs in their proper regulatory framework (or context):

1. Most of the cost associated with this rule is a direct result of the Department enforcing its responsibility to protect the public by taking action to correct a situation where the Department's Inspector General found existing compliance procedures to be ineffective. The decision on whether to treat the impact of new compliance procedures on firms that were taking advantage of the ineffective and outmoded procedures as a regulatory cost is really a value judgment.

The existing compliance procedures never envisioned the level of control that can be achieved with current technology. Therefore, the allowances they use are based on the production variances that existed several years ago with less refined production processes.

Establishment of more accurate compliance methods to match the refinement in production technologies and to eliminate the opportunity to purposely produce a product below the standard intended by the regulations is one of the reasons for promulgating the new rule. The Department is quite certain that there will be an impact on the processors who have taken advantage of the variability levels of the present compliance system by targeting production to the minimum acceptable limits. The Department is less certain that it is correct to view that impact as a cost.

2. The Department is mandating that the labeling approved on an interim basis for the "X percent water added" products be changed and that "non-traditional" cured pork products be produced only in conjunction with an approved PQC program. All other costs will be related to a particular processor's business or marketing decisions made in response to the rule. As mentioned earlier, the Department is not prohibiting the manufacture of any variety of cured pork product. Some firms may take the opportunity to produce new products. Additional costs could be associated with decisions to produce new products, but these are not mandatory under the regulation.

3. Because the Department can not predict the marketing decisions that firm's will make, it is impossible to aggregate the estimated costs.

The following discussion attempts to quantify the four types of costs identified above. With respect to these costs, the overall approach in the analysis has been to establish limits on potential costs. In some cases, these limits are based on worst case assumptions that lead to cost estimates which are substantially higher than those actually anticipated.

A. *Technological Assistance.* The new rule is a technical regulation covering a range of processed meat products produced under relatively complex procedures. Several variables affect the content of the finished product. These variables include the formula of the cure solution, the method by which the cure solution is injected and/or distributed throughout the product, the cooking time and temperature and the procedures for chilling

the product. Because of the revised standards, revised sampling plans and revised compliance procedures, some firms may decide to get professional help to reevaluate their current production processes in relation to the new rule.

The variability of a production process is known to be a key factor in determining compliance with the new rule. A review of a processor's historical production/yield records and analytical results should indicate whether the process is likely to be in compliance with the new standards. Some processors may, however, be hesitant to conduct these checks and calculations themselves and might seek the assistance of local academicians, professional consultants, suppliers of non-meat ingredients and agricultural extension personnel. The cost of this one-time analytical assistance could average \$300 per small plant. If all small plants choose to seek such assistance, the total cost would be \$231,600 (\$300 X 772). The Department believes that most small plants would not require outside assistance.

B. *Quality Control Costs.* To allow the production and distribution of "non-traditional" products and still meet its obligations under the FMIA, the Department is requiring that these products be produced only at plants for which a partial quality control (PQC) program has been approved and is in effect in accordance with 9 CFR 318.4. The Department does not have specific data on the cost of establishing a PQC program. PQC program costs are, however, believed to be only a fraction of the cost associated with the Department's total quality control (TQC) program. Therefore, this analysis presents the available cost data on TQC to establish an upper limit or worst case cost estimate.

Before discussing the costs of TQC, it is important to review the major differences in TQC and PQC programs. These differences show why the costs of PQC are believed to be substantially less.

As of January 1984, the Department had approximately 1,800 PQC plans approved in approximately 800 plants covering 84 different elements of inspection. Many of these PQC programs are approved in conjunction with labeling claims. For example, if a processor has a label that makes a specific claim about low fat, then that processor must have a PQC plan that describes (1) the procedures used to control the fat content in the product, and (2) the type and frequency of sample analyses that will be conducted. The PQC plans will generally address the equipment and staffing employed for the program, along with the records and documentation that will be available to the inspecting inspector upon request.

There are also PQC plans that cover broader elements of inspection such as plant sanitation and microbiological control. However, even in these cases the plans are still focused on one aspect of inspection. In contrast, a TQC program must address all the critical control points, from a regulatory perspective, of a plant's operation. To illustrate, a plant may be a very simple operation producing only a single product. However, the TQC plan for that plant must

still address areas such as employee training, overall plant sanitation and handling procedures for inedible product. In contrast, a PQC plan for the single product would discuss only the plants procedures for controlling the product, the types of sample analyses that would be conducted, and the records and reports that would be available to inspectors.

Early in 1982, the Department surveyed nine (9) TQC facilities (17 percent of the approved TQC plants as of May 15, 1982) and determined that participating small plants had incurred estimated initial expenses of \$3,140 (\$1,215 for the TQC plan, \$1,925 for equipment and negligible expense for training or miscellaneous costs). The average small plant expense for each succeeding year was found to be approximately \$5,950 (\$4,750 for employee wages and \$1,200 for laboratory analysis). The Department believes that the reported recurring annual expenditures were higher than necessary and may include wages paid for activities which were not strictly related to TQC. Nevertheless, these data are the best available and are provided for information. The 1982 survey also indicated that the burden on management time varied significantly according to plant size and TQC plan.⁶ But, the actual recordkeeping required by an approved TQC plan is merely the formalization of fundamental operational control activities and could involve as few as five items:

1. Daily sanitation record (checklist).
2. Product formulation records.
3. Product temperature record for cooked products.
4. Schedule of planned plant maintenance.
5. A weight control check.

The estimated costs for implementing TQC systems are, by themselves, misleading, because they do not consider the benefits that could be derived from QC-oriented operations, i.e.:

1. Minimization of process failures.
2. Reduced production delays.
3. Reduced likelihood of product contamination and recall.
4. Reduced USDA inspector overtime expense.
5. More awareness of efficiency determinants in plant operations, which increases the manager's ability to improve productivity and reduce total production costs.

6. Reduced need for excessive production tolerance margins, thereby reducing the amount of product "give away."

The Department believes that the above benefits from QC systems can reduce production costs and produce net savings for the processor. Therefore, consumer price reductions are feasible. The Department has not attempted to quantify QC benefits for meat processors.

Without accounting for the value of benefits, the estimated costs of TQC for all small processors would be \$2,424,080 (\$3,140 X 772 plants) during the first year and \$4,593,400 (\$5,950 X 772) per annum thereafter. However, quality control costs

would only occur if processors decided to market the lower protein, higher water products and, as mentioned earlier, partial quality control program costs should be only a fraction of the estimated cost for TQC.

C. Labeling Costs. The next cost which could be incurred by small processors would be associated with labeling changes made to comply with the new rule. The new rule does mandate a labeling change for products in the "X percent water added" category of "non-traditional" products. Products now labeled "(Common and Usual Name) and X Percent Water Added" will now be labeled "(Common and Usual Name) and Water Product—X% of Weight is Added Ingredients." The producers of other "non-traditional" products that are now labeled "(Common and Usual Name), Water Added" will face a marketing decision on whether to revise their product labeling or make adjustments necessary to meet the PFF standard for "water added" products. Adjustments in processing may result in the need to revise the ingredient statement on the product label. Thus, labeling changes that are a direct result of the new rule would involve a revision to the product name and/or a revised ingredient statement. Any other label changes would be made in order to produce new or different products allowed by this rule.

The cost of modifying a label is based on the extent to which the label must be redesigned and the type of printing process used. Most food labels are prepared by one of the following printing processes:

1. Lithography
2. Gravure (Rotogravure)
3. Flexography
4. Screen Print
5. Dry Off-set

The printing of labels is accomplished using a printing plate or cylinder or several plates or cylinders. These plates or cylinders are made from a film representation of the plate. One film may be used to make many plates because the plates wear out during the printing process.

Food labels frequently contain several colors. A separate printing plate is required for each of the primary colors (red, blue, yellow) that make a full color reproduction. A black plate is normally required for text and tone control of the colored images. An additional plate is required for each special design or advertising color used in logos, trademarks, etc. A typical multicolor label could require six printing plates that would be made from six different films (photographic transparencies).

While there are a number of possible variations, there are five common steps taken to prepare a printing plate in all printing processes. These are:

1. Design of the image.
2. Separation of the image into its color components.
3. Preparation of a mechanical layout for each color.
4. Preparation of a film (photographic transparency) of the mechanical layout for each color (including text).
5. Exposure and development of a printing plate for each color (including text).

In addition, certain other costs, such as administrative and production labor costs

relate to the number of distinct labels that have to be redesigned.

The cost estimates presented below are based primarily on estimates developed in 1980 by Arthur D. Little, Inc., as part of economic impact studies conducted for FSIS and the Food and Drug Administration.⁷ The 1980 Arthur D. Little estimates are based on market prices for printers, unit labor costs from the Bureau of Labor Statistics and conversations with food industry personnel and personnel from commercial plate trade shops and packaging companies that make their own plates. The original 1980 cost estimates have been adjusted to 1982 dollars by using the Consumer Price Index and the Average Wage Survey, Private and Nonfarm. The adjusted estimates have been incorporated into this analysis.

For this analysis it is assumed that there will be three costs associated with development of new or revised labels. These are:

1. The costs to produce new films.
2. Graphics design costs to redesign labels.
3. Labor associated with administrative, technical and legal review.

The cost for producing a new film ranges from \$64 to \$138 depending on the printing process. The average cost for the five processes is estimated to be \$96 per film. The average cost for graphic redesign is also approximately \$96 per film. It is estimated that for each new or revised label there will be labor costs to prepare the label change and to have the label approved by technical, management, and legal departments. This labor is estimated to equal:

- 0.5 Administrative Hours
- 0.5 Technical/Legal Hours
- 0.15 Clerical Hours

The total of 1.15 hours is estimated to cost approximately \$18 per redesigned label.

The new rule would require that labels for certain water-cured pork products would have to be modified by adding additional text to the product name and possibly the ingredient statement. At a minimum, the new rule requires decisions concerning new labels for the 73 "X percent water added" interim labels which are now used by 18 processors, one of which is a small business.

If the appropriate words can be fitted into the proper spaces, then only one into proper spaces, then only one film (a one-color text film) would have to be produced. The cost of producing a new label in this case would be \$114 (\$96 for producing the film plus \$18 for label approval). If the change requires more space or a differently shaped space than presently available on the label, graphic redesign would be required, but the change could still be confined to only the text film. In this case the cost per label would be \$210 (\$96 for graphic redesign plus \$96 for producing the film plus \$18 for label approval). If a change were such that it involved more than a one-color text, a film would have to be produced for each color. It is possible that changes to some labels could require changes to films for pictorial images, logos, trademarks, etc. In the worst case a

⁶ Cost/Benefit Survey Results of Selected TQC Plants, USDA, FSIS, Policy Analysis Staff, July 7, 1982.

⁷ Imported Meat Labeling Cost Analysis, USDA, FSIS, Policy Analysis Office, May 1981, pgs. 11-13.

label change might require six new films plus graphic redesign for each film and label review, for a total cost of \$1,147.

For the purpose of this analysis, it was assumed that all affected labels will require a new text film and that half of the affected labels will require some redesign of the text, but that all required changes can be limited to a single one-color text film. Under these assumptions, the average incremental cost per label would be \$162 per label: $[(\$114 + \$210) \div 2]$.

The maximum costs associated with labeling changes are limited. There are approximately 12,000 approved labels for the products covered by this rule where the finished product weight allows for added water and/or other added substances.¹⁰ If all these labels were modified, the total cost would be approximately \$1,944,000 (\$162 per label times 12,000 labels). Small businesses use only a portion of the 12,000 labels. The Department is also aware that not all approved labels are used and that labels within this category of products frequently change and the costs for these changes are considered part of the normal operating costs of producing a product.

In summary, only 73 labels will have to be changed. Other changes will be based on the marketing decisions that firms make.

D. Process Adjustment Costs. The remaining potential cost factor includes the expense associated with bringing a firm's process into compliance with the new regulations. As mentioned earlier, the Department recognizes that the processors of "non-traditional" products will face the marketing decision to either revise their product labeling or make the necessary adjustments to comply with the new standard for "water added" products.

The eighteen processors who now have 73 interim labels approved for "X percent water added product" may be inclined to revise those labels to read "(Common and Usual Name) and Water Product, Contains X Percent Added Ingredients." Consumer reaction to either the existing or the revised labels is probably irrelevant since these labels do not appear to be used on individual consumer packaging available in retail meat counters. The "X percent water added" products have been observed at delicatessen counters in retail stores. The Department believes that these products are also marketed to hotel, restaurant and institutional (HRI) buyers.

The Department expects that processors who now are producing "non-traditional" products that are labeled "(Common and Usual Name), Water Added" may want to adjust their process to continue with the labels they now use. The Department has some data that indicates the degree to which this situation might exist.

The Agency evaluated the results from 190 routine samples of "Ham, Water Added" product analyzed during the last quarter of 1980. Almost 86 percent (163) of these samples had PFF values above the new PFF standard for these products. Similarly, 41 of 48 samples (85 percent) of "Picnic, Water

Added" had PFF values above the new standard for the product. Because the compliance system allows for single sample variability, single sample results do not provide an estimate of the percentage of processors that will be in compliance. However, those data do support a conclusion that an estimated 10 to 20 percent of the plants producing "water added" product could have to make some adjustments to their process under the new rule. The amount of that adjustment will vary from plant to plant.

A process adjustment could involve one of several variables that influence finished product composition or weight. The adjustment could be a change in the formulation of the cure or a process change that would affect cooking time or chill time. Regardless of the adjustment, the end result is viewed as a loss in yield, where yield is the finished product weight stated as a percentage of ingoing raw pork product.

The data available to the Department suggests that at most approximately 20 percent of the product now labeled "(Common and Usual Name), Water Added" is actually "non-traditional" product. From Table 1, 20 percent of that product would amount to 316 million pounds (1,578,283,000 $\times$ 0.2). Available data suggests that the average loss in yield across the projected 20 percent "non-traditional" product would be less than 5 percent. Five percent of 316 million pounds is 15.8 million pounds. Thus, in the Department's judgment, the new rule could result in a loss in yield of up to 15.8 million pounds.

If this lost yield is viewed as a cost, then at current average retail prices for all covered products, it represents a retail loss of \$27.65 million ($\$1.75 \times 15.8$). If the products from small businesses are affected proportionally, then the small business loss would be 10 percent of \$27.65 million. This type of static calculation relating pounds to dollars does not account for changes in production costs and changes in wholesale and retail prices. While it is true that reducing water or other inexpensive ingredients will raise the production cost per pound, it is also true that a product with less "added substances" may bring a higher price per pound.

VII. Overlap With Other Federal Statutes

The USDA and FDA are the only Federal agencies issuing mandatory regulations regarding labeling and standards for food. Very few of the affected processors cross product jurisdictions between USDA and FDA. Those few that may be knowledgeable about the distinctions between the related products.

VIII. Alternatives to Relieve Burden on Small Business

The Regulatory Flexibility Act requires a description of any significant alternatives to the proposed rule which would minimize the economic impact of the regulation on small entities. The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) directs the Secretary of Agriculture to administer the program of meat inspection in a manner to assure consumers that meat products distributed to them are wholesome, not

adulterated, and properly marked, labeled and packaged. The FMIA includes certain specific exemptions to the law but does not grant the Secretary of Agriculture the authority to make any additional exclusions. Therefore, the Department only considered alternatives which involved all water-cured pork processors, not just small processors. The following alternatives were considered:

Alternative A—Modify Present System I

Initially, the Department studied two ways of modifying the present system. The first option involved codifying the present inspection procedures for determining added substances or added water. When first applied these provisions worked well, but advances in production technology and changing consumer demands resulted in significant changes in the nature of the product being produced, and resulted in the procedures being totally ineffective in determining compliance. Therefore, this option was rejected as not being viable.

Alternative B—Modify Present System II

The second option for modifying the present system involved significant increases in the compliance effort. This option would have stressed the importance of and increased the numerous checks and balances throughout the production process. It would have required increased effort by USDA inspectors and also meant substantial increases in production costs from increases in sampling costs and possible production delays encountered while the additional checks were performed. The Department has not calculated the costs for this option, but did estimate that the lost product associated with a substantially increased level of sampling could have cost industry approximately \$200 million annually. This option was rejected based on the potential increased cost to industry and the Department, and because it did not eliminate the problem of estimating the amount of added water in a product.

Alternative C—Extensive Market Testing

The Department also considered a third option that was not a modification of the existing system, but rather a strategy to provide consumers with more information on the content of cured pork products. This option would have required extensive laboratory analysis of cured pork products selected from grocery shelves, with results published for public review. It was found to be unacceptable since the Department cannot legally permit product to leave an official establishment if it is in violation of the requirements of the FMIA and the regulations thereunder. Therefore, the option was rejected.

IX. Summary

The new rule has several inherent flexibilities that the Department believes will moderate burdens on small processors. For example, the new rule permits considerable latitude in the quantity and frequency of samples to be collected, it provides simple mathematical formulas for the calculation of current product variability and it allows processors to make their own market-based

¹⁰ Includes all "water added," "X percent water added" and canned products.

decisions on what to produce. In addition, the new rule will become effective only after a period where both systems have operated simultaneously. This overlapping introductory period will give processors ample protection against the remote possibility of the initial compliance sample being rejected due to variances in production process. It would also provide processors with the opportunity to judge the

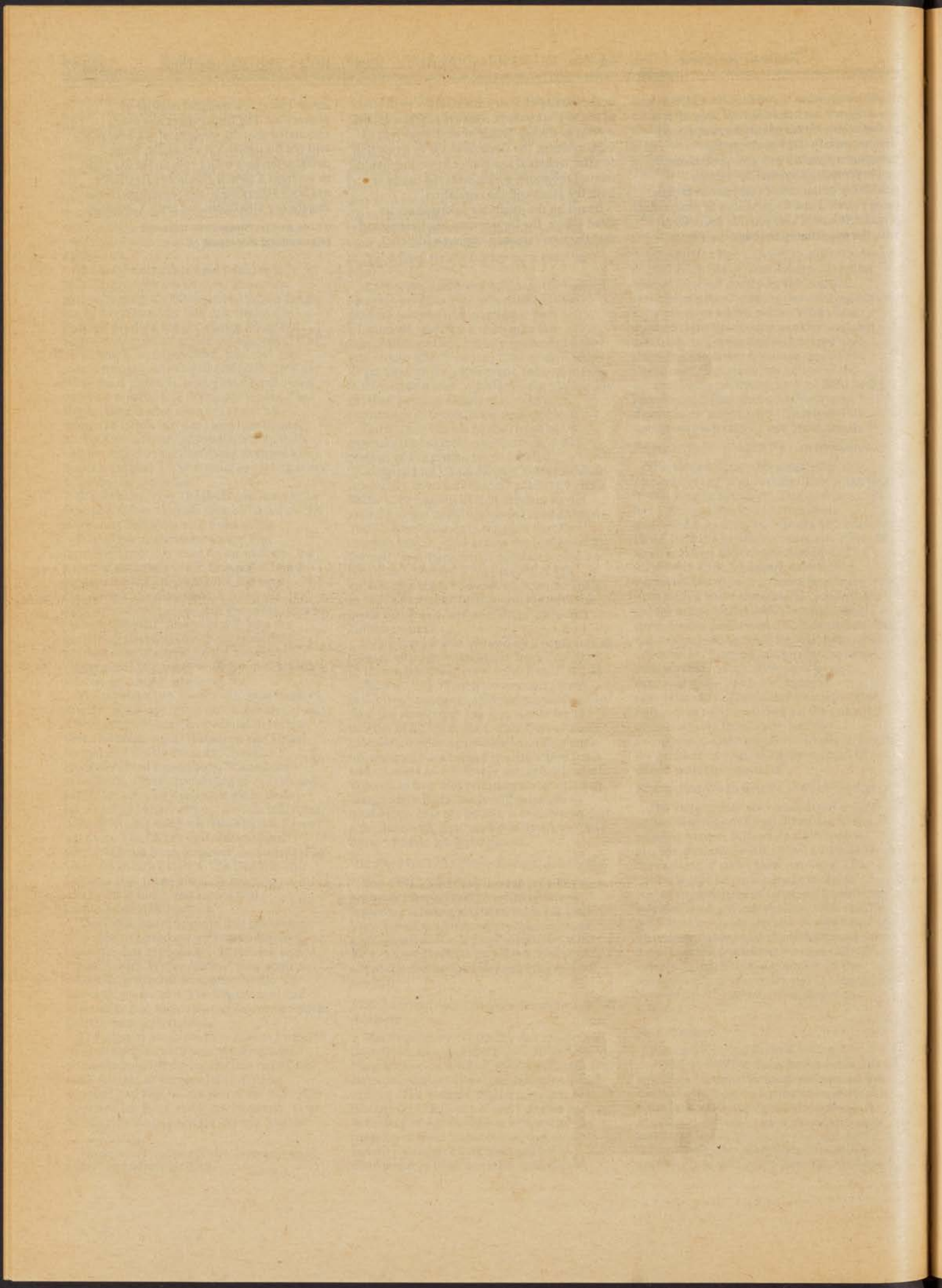
acceptability of their current process in terms of the PFF standards. Then, if processors feel a need to change labels or seek approval of PQC systems, the Department is in a position to offer technical assistance in writing quality control programs which meet the needs of both the plant and the regulation.

Based on the available information, as cited above, the Department has determined that the new rule may impose additional

minor costs on a minimal number of processors. The Department has also concluded that the impacts of the new rule will not be significant enough to cause designation as a major rule under EO 12291 or warrant a formal regulatory flexibility analysis according to the provisions of the Regulatory Flexibility Act (Pub. L. 96-354).

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Part V

Department of the Interior

National Park Service

36 CFR Part 61

**Procedures for Approved State and
Local Government Historic Preservation
Programs; Final Rule**

DEPARTMENT OF THE INTERIOR**National Park Service****36 CFR Part 61****Procedures for Approved State and Local Government Historic Preservation Programs****AGENCY:** National Park Service, Interior.**ACTION:** Final rule.

SUMMARY: These final rules incorporate the requirements for State and local historic preservation programs as specified in the *National Historic Preservation Act* as amended in 1980 (the Act). The title and organization of the existing 36 CFR Part 61 are revised to reflect changes required by the 1980 amendments to the Act.

These rules establish regulations for approval of State historic preservation programs and also establish procedures for Historic Preservation Fund (HPF) matching grants-in-aid to approved State programs. This rulemaking will establish, for the first time, a process by which local governments will be certified to participate formally in the National historic preservation program. The proposed rules also set forth procedures for the transfer of a portion of each State's annual HPF grant to certified local governments. The reserved sections, procedures for State program evaluation and procedures for the Certified Local Government (CLG) program when there is no approved State program, have been prepared and will be published for comment in the near future.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Hardy L. Pearce, Chief, Survey and Planning Branch, Interagency Resources Division (202-343-9505).

SUPPLEMENTARY INFORMATION: This rulemaking was necessitated by enactment of the *National Historic Preservation Act Amendments of 1980*, Pub. L. 96-515, on December 12, 1980.

The *National Historic Preservation Act*, as amended (the Act) specifies basic requirements for approval of State historic preservation programs. The requirements and responsibilities listed in the Act are incorporated into this rulemaking. Procedures also are included in these rules for HPF matching grants-in-aid to approved State programs; matching grants are made in accordance with *The National Register Programs Manual*.

Section 101(b)(2) of the Act requires the Secretary of the Interior (Secretary) to conduct performance evaluations of State historic preservation programs.

Procedures for these evaluations have been prepared and will be published for comment in the *Federal Register* in the near future.

Since enactment of the *National Historic Preservation Act of 1966*, the historic preservation expertise and activities of local governments have significantly increased. The Act, however, provided no opportunity for local governments to be involved formally in the National historic preservation program administered by the Department of the Interior's National Park Service (NPS). Lack of formal participation by local governments often meant that historic preservation issues were not considered until development planning was well under way. This often resulted in preservation/land development conflicts causing project delays and increasing costs. In addition, opportunities frequently were lost for preservation-oriented development that could satisfy both preservation and development goals.

In recognition of the need to involve local governments in historic preservation, the 1980 amendments to the Act provided a specific role for local governments in the national program. The Secretary is required by the Act to develop regulations for the certification of local governments and for the allocation of HPF monies by States to certified local governments (CLGs). Sec. 103(c) of the Act directs States to provide for the transfer of at least ten percent of the State's annual HPF grant to certified local governments.

The Act directs States with approved State historic preservation programs to develop a mechanism for the certification of qualified local governments. The Secretary also is required by the Act to issue rules for the certification of local governments in States that do not have an approved historic preservation program. These proposed rules have been prepared and will be published for comment in the *Federal Register* in the near future.

The Secretary intends to have the rules for local certification and funds transfer provide flexibility to meet the needs of communities throughout the country. States will be given the primary responsibility for establishing both certification mechanisms and procedures for transferring HPF grant funds as subgrants to certified local governments. The Secretary will exercise his authority through review and approval of the processes for local certification and grant funds transfer developed by each State.

To qualify for certification, the Act specifies that local governments must have certain administrative and legal

capacities. Once certified, a local government will be included in the process of nominating properties to the National Register of Historic Places and will be eligible to apply to the State for a share of the State's annual HPF allocation.

These rules provide States with a framework on which to base development of procedures for local certification and funds transfer. The approach set forth by the Secretary in this rule gives States the primary responsibility to develop these procedures. This approach is consistent with the intent of the Act. These rules strengthen the existing historic preservation system by extending to local governments the opportunity to be directly involved in the National program for the identification, evaluation, and protection of historic properties.

These rules establish the criteria by which the Secretary will review State processes for local certification. These rules are minimum requirements and are derived from the Act to ensure that State processes conform to the statutory intent of the Act. The Secretary and/or the States may amplify these requirements to reflect State and local government program concerns. The rules also establish criteria by which the Secretary will review State procedures for the transfer of HPF monies to certified local governments. These criteria ensure consistency and accountability in fiscal management and are intended to ensure that no local government receives a disproportionate share of the funds available.

These rules require States to propose local certification and funds transfer processes and specify schedules for the submission of State proposals and for the Secretary's review and approval. In developing their proposals, States are required to analyze local preservation needs and capabilities, consult with local governments, local historic preservation commissions and other interested parties, and assess the capabilities of different types of local governments in the State.

Once its proposal is approved by the Secretary, a State may begin to certify local governments. States will notify the Secretary and forward to the Secretary copies of all certification requests approved according to the State's Department of the Interior (DOI) approved certification process. If the Secretary does not take exception to the request within a specified period, the local government is to be considered certified by the Secretary. In addition, transfer of HPF financial assistance in

accordance with the approved process may begin.

The Secretary will review the functioning of State certification and funds transfer processes during performance evaluations and audits of approved State programs that are required by section 101(b)(2) of the Act.

More prescriptive regulations were considered; however, the Secretary concluded that the varying preservation needs and capabilities of communities make it inappropriate for the Federal government to dictate a set of procedures to which all local governments must adhere. States have latitude to set priorities for allocating the CLG share of their annual HPF grant.

Comments and Response to Comments on the May 2, 1983 Publication of Proposed Rules

General Comments or Comments That Did Not Address Specific Language

The sections reserved in the proposed rules will be published for comment as suggested by two commentors.

One person suggested unifying or putting next to each other the certification section and the funds transfer section for Certified Local Governments (CLGs). The suggestion was not adopted as the organization of 36 CFR Part 61 is clear as presented.

It was suggested by one person that the Department of the Interior avoid vague terminology; e.g., "adequate," "inadequate," "reasonable," etc. Clarifications have been provided to the extent possible. In some cases it is preferable to leave the flexibility in interpretation that the terms allow.

One commentor suggested that the phrase "certain administrative and legal capacities" which was used in the supplemental material of the proposed rule, be defined. The phrase is not used in the actual rule and so is not defined there. However, it originates from the Committee Report for the *National Historic Preservation Act Amendments of 1980* and refers to CLG specifications enunciated in §§ 61.5 and 61.7.

It was suggested in one comment that the rule encourages the use of procedures implementing Executive Order (E.O.) 12372. E.O. 12372 is applicable to portions of 36 CFR Part 61, but like all other Federal-wide requirements, not appropriate or feasible to refer to in this regulation.

Two comments suggested that Indian Tribes, like States, be made eligible for direct funding and have tribal preservation officers because they do not fit well in the CLG framework. The comments pointed out that tribes are not political subdivisions of States.

Tribes are eligible for funds as subgrantees of State programs. Funds are not available to implement the direct grants to tribes authorized in Section 101(d)(3)(B) of the Act. Tribal preservation officers are not authorized by the Act. The Act only allows for the operation of approved State programs and/or CLG. If a tribe meets the definition of a CLG, it may be certified. If not, there is no authority to establish tribal preservation officers in these regulations.

Two people thought that the CLG program will require States to incur additional costs. We disagree. We believe that CLGs will be conducting some activities currently handled by the States and that may allow States to reduce their effort in other areas.

Definitions (Section 61.2)

Section 61.2(e): One person suggested that "Resource Management" should not be used in the definition of "Comprehensive historic preservation planning" because "it conveys a sense of ownership, operation, maintenance and interpretation of historic resources. State programs emphasize service delivery, planning and technical assistance, not resource management." This suggestion was adopted.

Section 61.2(f): One person wanted to know if there was going to be a document called the State Plan that will be approved by NPS, and would it have to be cleared against the State Comprehensive Outdoor Recreation Plan as required in the *National Historic Preservation Act, as amended*.

The commentor is correct. Section 102(a)(2) of the Act states that no grant can be made under the Act "unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the *Land and Water Conservation Fund Act of 1965*, (78 Stat. 897)." A definition of "comprehensive statewide historic preservation plan" has been added to the final rule.

Section 61.2(j): Four comments suggested an expansion of the definition of local government to include sub-State Regional Planning Commissions, Indian Tribes, and Councils of Governments (COGs).

The definition of "local government" is given in Section 301(3) of the Act and as such cannot be changed by regulation. A Regional Commission or a COG is not "a general purpose political subdivision of any State." It follows

therefore they do not qualify to be the direct recipients of pass-through funds.

However, if CLGs wished to pool their already awarded funds and give money to a Regional Commission (or a COG or an Indian Tribe) for a project or a service that is mutually beneficial to all CLGs participating, that would be permissible. It is also permissible to consult Regional Commissions (or others having the expertise) when a CLG does not have the requisite expertise available. For example, a number of CLGs could combine to pay for a full time professional on the Regional Commission who would sit on or advise local commissions in a particular discipline.

Implementation of 36 CFR Part 61 (Section 61.3)

Section 61.3(b): Two comments suggested making the material in the appendices of the proposed rule (especially the Secretary's Standards) part of the regulations. Two other comments suggested reinstating old § 61.6, "Comprehensive Statewide Survey Process"; § 61.7, "State Historic Preservation Plan"; and § 61.8, "Protection of Historic Properties through the Planning Process" as a good basis for programs currently being developed in the States.

All technical standards and guidelines are being moved to the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*. Technical material, as opposed to procedural material, is better handled outside regulations. So long as regulations identify the standards to be met, there is no problem of effect or dilution. However, the rule specifically references the Secretary's Standards and Guidelines in § 61.3(b) and adds a definition in § 61.2(n).

Approved State Programs (Section 61.4)

Section 61.4(a): One person suggested inserting "or as otherwise specified by state law," after the statement that the State Historic Preservation Officer (SHPO) should be appointed by the Governor. This suggestion was not taken because Section 101(b)(1)(A) of the Act requires "designation and appointment by the Governor" of the SHPO.

Section 61.4(a): One person thought that the SHPO should be required to meet professional qualifications. The professional expertise in State programs is provided for adequately by the State staff and the Review Board. For SHPOs to have experience or expertise in historic preservation is clearly an advantage, but is not essential for

administration of a satisfactory program.

Section 61.4(b): Several comments thought that the role that State programs should undertake was relatively undefined, and that other specific responsibilities should be listed such as: participation in the Preservation Tax Incentives Program, administering the HPF Grants Program, participation in the section 106 Review and Compliance Program, the State's liaison role with private preservation groups, State enforcement responsibilities, and that the State provide for adequate public participation in all aspects of the State historic preservation programs.

The requirements for Approved State Programs are established in the *National Historic Preservation Act, as amended*, and the Secretary is authorized only to interpret those requirements, not to change them. Furthermore, within the parameters set by the Act, by the SHPO responsibilities in 36 CFR Part 61, and by other manuals and guidance from NPS, every State must have the flexibility to fashion its preservation program according to its own needs. However, we have added explanatory language to some of the SHPO responsibilities.

Preservation Tax Incentives are not mentioned in the Act as an SHPO responsibility as all the listed requirements are. Furthermore, Preservation Tax Incentives are not applicable to all States by law (e.g., the Virgin Islands) and participation is expected to be voluntary on the part of the other States after publication of 36 CFR Part 67. However, because the tax program is an eligible HPF cost, it must be reported upon by the States under grants requirements and is reviewed under § 61.4(b)(4), administering the State program of Federal assistance.

Administering the HPF Grants Program is included in § 61.4(b)(4), administering the State program of Federal assistance.

No State that is not an approved program may be awarded funds. No State will retain its approved program status unless it properly carries out all of its responsibilities (§ 61.4(c)) including "assisting State and local government agencies in carrying out their historic preservation responsibilities" § 61.4(b)(5).

Section 61.4(b)(5), "Advise and assist Federal, State, and local government agencies in carrying out their historic preservation responsibilities," and, § 61.4(b)(6), "Cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal, State, and local government agencies to insure that historic properties are taken

into consideration at all levels of planning and development" are taken directly from the *National Historic Preservation Act, as amended*, and encompass all SHPO review and compliance responsibilities including section 106.

Section 2 of the purposes section of the Act refers to the Federal "partnership with States, local governments, Indian tribes, and private organizations and individuals * * *" clearly implying that States do have the liaison responsibility. It has been included at the end of § 61.4(b)(7). Public Participation cannot be listed as a separate SHPO responsibility because it is not so described in the Act as are all the listed SHPO responsibilities. However, public participation is intrinsically included in some of the other responsibilities. NPS encourages public participation in State programs (see § 61.4(f)) and there are existing government-wide requirements for public participation. The Act specifically requires public participation in the National Register process. Thus the intent of the comment is met.

Section 61.4(c): One person noted that carrying out SHPO responsibilities should be listed as requirements for approved State programs. This was intended to be the case in the proposed rules. § 61.3(c)(1) has been altered to make this clear.

Section 61.4(d)(1): One comment suggested that we define "expanded participation" or not use it in requirements for State staff. The phrase has been deleted. The requirement for "approved State programs" renders the concept obsolete.

Section 61.4(d)(4): The procedures to be followed when there is a vacancy in a required staff position were addressed by five comments. Three thought that suspension of decisionmaking in a discipline when that position is vacant is too harsh and disruptive of State programs. One thought that suspension of decisionmaking in a discipline when that position is vacant is too lenient because as related to nominations, decisions in all disciplines should be suspended because they would lack the interdisciplinary input previously available. One suggested that a State have 9 instead of 6 months to remedy the situation (§ 61.4(d)(7)) "to accommodate state staffing and appointment realities."

The purpose of this provision is to guarantee that the requisite expertise be applied to a task, and that State programs not be disrupted. The language has been changed to require suspension of activity only until temporary measures have been taken by the State

to provide the requisite expertise. As soon as the approved temporary arrangement providing the requisite expertise is in place, the State may renew decisionmaking in that area. This provision applies only in instances where there are Federal law, regulations, or written requirements assigning a particular staff discipline to a specific task.

If a State needs longer than 6 months to fill a lapsed position, it may apply to the Secretary for a waiver under § 61.8.

Section 61.4(e)(1): Five comments requested that the rule reinstate the old qualification for non-professional Review Board members; i.e., that they have demonstrated a positive competence, interest, or knowledge in historic preservation. One comment noted an instance in which officials thought that they had to appoint anti-preservationists to balance the Review Board.

The Review Board is intended to be concerned with the advancement of historic preservation. The rule has been changed to state that "the Review Board shall consist of members who have demonstrated a competence, interest, or knowledge in historic preservation, and a majority of Review Board shall be professionals in the following or related disciplines * * *"

Section 61.4(e)(1): One person suggested that the rule require that at least 75% of the Review Board meet professional qualifications. The existing rule requires a majority of professionals for the Review Board. This protects the professional nature of the Review Board. The rule does not directly require any specific level of non-preservation professional representation on the Review Board. It is up to each State to determine what other members to appoint to the Review Board. A State could require a 75% professional Review Board if it so chooses.

Section 61.4(e)(4): One person stated that anyone should be able to call for the review of an alternate or unorthodox Review Board make-up, because "there are too many unqualified Review Boards."

The rule provides that alternate Review Board requirements "remain in effect until they are reviewed at the Secretary's discretion, or at the request of the State." Anyone could present a written request for review of an alternate make-up with a demonstration of how the Review Board is not properly fulfilling its responsibilities. If NPS agrees that the situation merits investigation, it will exercise the Secretary's discretion and review the alternate Review Board make-up. A

regular review will take place as part of the State Program Approval Process. At that time the State will have to demonstrate that the situation justifying the alternate make-up has not changed and that the State has taken steps to remedy the situation. This would also apply to any waiver under § 61.8.

Section 61.4(e)(5): The procedures to be followed when there is a vacancy in a required Review Board position were addressed by six comments. Three thought that suspension of decisionmaking is a discipline when that position is vacant is too harsh and disruptive of State programs. Two thought that suspension of decisionmaking in a discipline when that position is vacant is too lenient because of the intended interdisciplinary nature of all Review Board decisions on nominations; e.g., the architect and the historian might both have valuable contributions to make in the evaluation of a building. One suggested that a State have 9 instead of 6 months to remedy the situation (§ 61.4(e)(5)) "to accommodate state staffing and appointment realities."

The purpose of this provision is to guarantee that the requisite expertise be applied to a task, and that State programs not be disrupted. In practice it would be far too disruptive to shut down the entire Review Board because one required position was vacant. Considering that most Review Boards meet 3 or 4 times a year, such an action would create backlogs in areas unrelated to the problem with their consequent delays, increased costs, and bad feelings among those who feel that the nomination process takes too long already. The rule does safeguard the integrity of Review Board decisions by requiring that in the event of a vacancy, States take immediate steps to ensure that Review Boards have access to the expertise necessary to make objective professional judgments.

If a State needs longer than 6 months to fill a lapsed position, it may apply to the Secretary for a waiver under § 61.8.

Section 61.4(e)(6): One comment suggested that the rule require a professional majority to be present whenever a decision is made concerning a property; and, one comment suggested that the rule require that the appropriate discipline be present when a decision is made on a property.

The reason behind these comments is valid but the suggested solutions would be disruptive to States for the same reasons as for Review Board vacancies. Also, if adopted, this could lead to a veto by willful absence.

The reason for requiring professional members on the Review Board is so that

appropriate professional expertise may be applied to decisions about properties; e.g., archeological expertise should be available when an archeological nomination is reviewed and voted upon. Therefore, the rule has been changed to require that "in making decisions the Review Board must have access to the expertise necessary to make objective professional judgments." This allows States to take temporary measures to "cover" for the absence of a professional majority, yet still ensures that professional decisions are made.

Section 61.4(e)(6): One comment suggested that the Review Board should be required to meet more often; at least 4 or 5 times a year.

In addition to the minimum required 3 meetings a year, every Review Board should meet as often as it needs in order to take care of its workload given constraints in expense and time. Some Boards do not need more than 3 meetings per year to accomplish their tasks. When such a regulatory change was proposed 2 years ago, it was almost uniformly opposed. A summary of those comments is that such a change would not produce benefits commensurate with the hardships it would cause.

Section 61.4(e)(7)(i): Two commentors noted that even with CLG review of nominations, the State Review Board should not be removed from the process. We agree. The rule states that for all approved States, the State Review Board must review each nomination prior to its submission to the National Park Service.

Section 61.4(g): One person was opposed to allowing States to carry out their responsibilities by contract or cooperative agreement because one can't presume on the adequacy of State law. The commentor thought that States should rely on their own professional staffs.

This provision is required by law: Section 101(b)(4) of the *National Historic Preservation Act, as amended*.

Approved Local Programs (Section 61.5)

Section 61.5: One person requested that CLG responsibilities relating to National Register nomination review should be specified.

Beyond the requirement that local commissions "objectively evaluate" and write a report on the eligibility of all properties within CLG jurisdiction that are nominated for listing in the National Register, and that the chief elected local official provides his/her recommendation on such a property, CLG nomination responsibilities may vary depending upon the State and the CLG. The minimum requirements are to be provided in 36 CFR Part 60.

Section 61.5: Three comments recommended that the rule should clarify the relative roles of the local government and the local commission.

Though the rule does describe specific aspects and responsibilities of local commissions, it is the local government that is certified, not the commission. The regulation has been edited to ensure that this is clear.

The local commissions are responsible to the State only through the local government. Both the local commission and chief elected local official are independent in their evaluation of nominations and other required decisionmaking responsibilities. The local government in accepting certification agrees to follow the spirit as well as the letter of the Act, the regulations, and the certification agreement with the State.

Sections 61.5(b)/61.7(c): One person raised questions related to Conflict of Interest. There was nothing in the proposed rule dealing with this subject. Should there be the same rules relating to the appearance of conflict of interest for CLGs as there are for the States?

The State as grantee of Federal funds is responsible for avoiding all conflict of interest problems associated with CLG subgrants just as it is for any other program area. Even if no HPF funds are involved, regulations and standards (e.g., conflict of interest) governing performance of State functions remain applicable to those entities to which the functions are delegated.

Section 61.5(b): Four comments were concerned with delegations beyond the minimum requirements. Two thought that States should have the flexibility to delegate different things to different local governments depending upon their capabilities. Two people wondered what could and could not be delegated by the State in the Tax Program, Review and Compliance, and other program areas not specifically mentioned by the rule.

The final rule addresses these points. Beyond the minimum requirements set by the rule for all CLGs, States may vary additional delegations of authority from CLG to CLG as States see fit. This will give States the flexibility "to meet the differing needs of various communities throughout the country" (*National Historic Preservation Act Amendments of 1980, Committee Report, page 29*).

Except where specified by law or regulation (e.g., the operations of the Review Board and direct nominations to the National Register), any function of the State office may be delegated. Despite any delegation, the State remains ultimately responsible and

accountable for all functions derived from the Act.

Note that the function of the State Review Board may not be abrogated. As long as the State has an NPS-approved program, only the State may nominate properties to the National Register.

Section 61.5(c)(2): Sixteen comments were made on the requirement that to the extent available in the community, there be professionals on the local commission. Four comments favored the requirement (two wanted it strengthened), nine were against it for a variety of reasons (discussed below), two suggested alternatives to the requirement, and one suggested a limitation.

The requirement must be retained. Section 301(13) of the Act requires that local commission members be appointed from among professional disciplines to the extent available. This is reinforced in the Committee Report on the 1980 Amendments; i.e., the Committee intends by providing definitions "to ensure that these boards and commissions function primarily as professional bodies which can objectively evaluate the historic significance of properties and provide professional advice on historic preservation matters."

The final rule clarifies the requirement by adding that "local governments may be certified without the minimum number of type of disciplines [State specified] if they can demonstrate that they have made a good faith effort to fill those positions."

The following addresses the specific concerns raised by the comments:

a. Seven stated that because there are few if any of the requisite professionals in small towns, small towns couldn't qualify.

The Act requires the local commission to act as professional bodies, but note that the membership requirement is that professionals be appointed "to the extent available."

b. Four comments said that the professional requirement is contrary to the State's enabling law.

Federal law takes precedence on this issue.

c. Two commentors thought that professional expertise was not needed on the local commission because the Review Board provides the needed professional expertise in reviewing nominations; the local commission should just advise on a property's significance in the community.

The local commission should provide the local expertise suggested. Nonetheless, the Act and the Committee Report also require professional expertise to the extent available.

d. One person was worried that a town would be required to appoint the sole professional in town even if he/she had a bias against preservation.

To avoid the problem suggested, the final rule states that all members of the commission have demonstrated an interest, competence, or knowledge in historic preservation.

e. One person noted that with only a few professionals in town, there would likely be conflict-of-interest problems.

The State is responsible for avoiding all conflict of interest problems just as it would have to for any delegation, contract, or subgrant.

f. The local commission would be too academically oriented with a majority of professionals on it.

The rule does not require a majority of professionals. Furthermore, professionalism does not necessarily imply academic, nor is that necessarily bad.

g. One person suggested that instead of professionals, commission members should be qualified by special interest, knowledge, or training in historic preservation.

A good faith effort to obtain professional members for the commission is required (see above), but the qualifications suggested are appropriate and were adopted for all members.

h. Another person suggested that instead of professionals, the rule should require education or orientation by the State of all new local commission members, while two suggested that there be training in addition to the professional requirement.

The training and education suggestion was adopted for all Local Commissions. This will be a partial fulfillment of the SHPO requirement for public education.

i. One person recommended that if professional members are required on local commissions, the regulations should ensure that the State imposed standards for local commission membership are not more stringent than for membership on the State Review Board.

This suggestion has been adopted.

j. One person suggested that if not for all CLG activities, at least the rule should require professionals for survey and nominations work. The rule does require that when professional expertise is not available, "the Commission shall be required to seek expertise in this area when considering National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such discipline." Each State will determine the means to do this. This is consistent with Congressional intent that local

commissions be professional bodies to the extent possible.

Section 61.5(c)(2): One comment recommended that any negative vote by the Local Commission should be valid only if there is a majority of professionals present.

While this is a potential problem, the fact is that commission memberships are likely to be highly variable and a majority of professionals often may not occur. In any event, the appeals process is available to correct any problems (see 36 CFR Part 60).

Section 61.5(c)(2): One person suggested that there should be professional qualifications for the local commission executive. Executive directors for local commissions are not required. Therefore, the qualifications of any executive director are to be determined by the local government. However, a demonstrated interest, experience, or expertise is recommended.

Section 61.5(c)(2): One person was concerned about preventing Commission packing. There is nothing in the rule preventing a commission being packed with lay members; e.g., two preservation professionals and 15 real estate developers and bankers. The commentor was worried because the reason for requiring both professionals and lay members is to allow broad-based representation of the community. The rule requires that local commissions avail themselves of professional members and professional expertise to the extent available. Requiring a majority of preservation professionals is not practical for many of the smaller communities. Lay members with a "demonstrated interest, knowledge, or expertise in historic preservation" should not be viewed as the antithesis of preservation professionals. Both groups are concerned about historic preservation, can provide useful insights into the local significance of a property, and will often have similar opinions on a given property. The following steps could be taken to improve the quality of decisionmaking regardless of the mix in the local commission:

a. Recommending to States that they apply a "rule of reason" to the mix of preservation professionals and lay members.

b. Requiring the State to train or orient all commissions assuming that understanding of the preservation program will lead to more informed decisions. The training/orientation would be an HPF grant-eligible cost.

c. Suggesting that States require local commissions to create an attendance rule for commission members. This

would avoid one time attendance for a particular property. Increased familiarity with the program would also lead to more informed decisions.

d. Lay members must still be qualified to become commission members in the sense that they must have "demonstrated special interest, experience, or knowledge in history, architecture, or related fields." While it is up to the State as to how and when the qualifications will be checked, the qualifications must be checked.

Section 61.5(c)(2): One person wondered what was meant by "or related disciplines" (to history, archeology, etc.)? Do professions such as banking, real estate, and landscape architecture qualify as related professions? The proposed rule provided no guidance at the CLG level or at the State level (i.e., for the State staff and Review Board).

Professionals in any "related discipline" must be positively involved in historic preservation (e.g., not demolition) as part of their work in that discipline. For example, a banker with extensive experience in HUD preservation housing programs or preservation loans might be an appropriate commission member. To qualify as a preservation professional member, the person involved must make his/her living in that preservation related field or have commensurate education in the preservation aspects of that field; or, if not working at the profession, meet the experience qualifications of State Review Board members.

The final rule contains additional examples of disciplines related to those named.

Section 61.5(c)(2): There were three questions related to jurisdictional aspects of CLGs and local commissions.

a. Is only one commission allowed per local jurisdiction or is it one commission per historic district?

For CLG purposes, the jurisdiction of the local commission coincides with the geographic jurisdiction of the local government. Therefore there is just one local commission per local jurisdiction. The CLG local commission may be made up by combining existing district commissions which may continue to operate in some activities. However, any activity specifically listed in the Act of this regulation or other activities that the State specifically identifies in the certification agreement must be handled by the CLG local commission as a whole.

b. How should overlapping jurisdictions (e.g., both a city and a county wishing to be certified) be handled?

States should ensure that there is no overlap. It is up to each State to decide how to coordinate such competing applications for certification.

c. Is public property subject to CLG jurisdiction?

A Certified Local Government jurisdiction is limited to that of the local government. As a creation of local government, it only has the powers delegated to it by the local government. Control of State and federally owned land is subject to laws and regulations at the State and Federal levels respectively.

Section 61.5(c)(2)(i): One comment stated that private preservation organizations (e.g., Historic Fredericksburg Foundation, Inc.) are often more qualified to do National Register work than CLGs, especially if the CLG does not have a qualified professional staff. The comment added that in areas having private preservation organizations, it would be detrimental to preservation to leave the National Register process solely in the hands of the CLG.

The Act requires that CLGs review properties nominated within their jurisdiction. This does not exclude private preservation organizations from the nomination process. There is nothing that precludes CLGs from seeking consultation from private preservation organizations. The rule references private preservation organizations as an example of sources for consultation.

Sections 61.5(c)(3)/61.5(d)(2)/61.7(b): The rule requires a local survey program. One commentator wanted to know if a local community would be eligible to be certified if it had already completed its survey. To receive funds if certified?

A community's perception that either its survey is complete or that there are no more properties to nominate should not preclude that community from being certified. Completion should be evaluated by the SHPO. Nonetheless, additional responsibilities may be delegated from the State. The local commission would still have the responsibility to "advise and assist the chief local elected official on matters related to historic preservation" (National Historic Preservation Act Amendments of 1980, Committee Report, page 45). In order to be certified, the community must still have the capacity to evaluate nominations and to do survey according to the minimum requirements of the Act.

The fact that a CLG has completed all nominations/survey could be a factor in setting State allocation priorities. Because Congress focused on these two aspects of the preservation program,

States may wish to focus their allocation in a similar direction.

Section 61.5(c)(4): One person wanted to know whether notification alone is sufficient public participation in the National Register process. The Secretary encourages States to include in their certification process requirements for open meetings, published minutes, etc., as means for encouraging public awareness and participation in the local preservation program. State Open Meeting laws and parallel Federal, State, or local laws and regulations may also be applicable but are outside the scope of this rule.

Section 61.5(c)(4): The final rule adopts the suggestion in one comment that notification revisions to 36 CFR Part 60 relating to CLGs be referenced.

Section 61.5(d): Two comments stated that the State has too much control for the amount of money involved; there is no real inducement for local governments to participate in the CLG program.

The main inducements for local government participation in the CLG program are two: 1. A CLG has significant authority delegated to it especially in the area of National Register nominations. 2. A CLG competes only with other CLGs for the pass-through funds (at least 10% of the State's total HPF allocation), not with all other eligible activities in the State.

Section 61.5(d)(1): One person recommended that the rule allow nominations to be made directly to the National Park Service by qualified CLGs.

CLGs may make nominations directly to the National Park Service only when the State does not have an approved program. Section 101(a)(4) of the Act stipulates State participation after CLG review.

Section 61.5(e)(f): One comment requested that the rule define what "adequate consultation" means in the State's pre-process submission activities.

The final rule has clarified what is meant by "adequate consultation," namely:

a. The State has given notice to all parties likely to be interested in the CLG process that the process is being developed;

b. The State has provided reasonable notice and opportunity to comment on its draft process; and

c. The State is able to respond to all suggestions that it does not adopt.

Section 61.5(e): One person recommended that the rule require States to provide a list of all parties they consulted in developing their processes.

Language has been added requiring each State to keep a record of their consultation processes and to make it available to the Secretary upon request. Records should be sufficient to allow the States to document the steps they have taken in the consultation process.

Sections 61.5(g)–61.7(i): Two comments requested that the final rule clarify the Department of the Interior's standards for the review and approval of State processes and certifications.

The rule specifies that the Secretary will examine State processes and certifications to determine if they have acceptably addressed every mandatory aspect of the Act and this rule.

Section 61.5(j): Two commentors thought that local governments should be able to appeal to the Department of the Interior for improper denial of certification, or for decertification.

This suggestion was adopted.

Section 61.5(j): One person raised issues related to "the rights or options of a local government when the State impedes the full realization of the Act;" as follows:

a. When the State loses approved status?

Nominations and funding will be handled directly with the National Park Service.

b. When the State does not apply for the full amount of its allocation?

No recourse except to the State. NPS does not evaluate the wisdom of grant application decisions, only whether minimum application requirements are met.

c. When the State impedes the preservation work of a CLG?

This should be brought to the attention of NPS. NPS will act depending upon the nature of the impediment. Such complaints might be examined as part of the periodic State program approval process.

Grants to Approved State Programs (Section 61.6)

Section 61.6: Two people thought that there should be a reference to the general eligibility for HPF funding of all activities related to carrying out the required SHPO responsibilities. It was the view of one commentor that the proposed §61.6 was too limiting. Furthermore, that commentor recommended that preserving and protecting properties that are *eligible for listing* on the National Register should be eligible for funding instead of just those properties listed on the National Register.

Generally, any eligible activity related to operating a State program according to the Act and implementing the regulations is eligible for funding.

However, eligibility is defined in *The National Register Programs Manual* because it is an administrative decision revised frequently due to Congressional or other Federal action.

When grants are awarded for properties, those properties must be included in the National Register of Historic Places according to Section 101(d)(1) of the Act. Properties that are not listed on the National Register will not be eligible for funding. To act otherwise would allow owners who object to listing on the National Register to receive the benefits associated with listing.

Transfer of Grants to Certified Local Governments (Section 61.7)

Section 61.7: One commentor stated that local governments making an effort to become certified should be eligible to receive funding.

They are eligible now under normal subgrant procedures. However, they are not eligible for the 10% pass-through. The Committee Report (Page 33) for the *National Historic Preservation Act Amendments of 1980* implies that this requirement is a technical error in the law. The Committee specifically withdrew this requirement from Section 103 of the Act but neglected to withdraw the parallel provision from Section 101(c)(3). The Committee Report states: "Local governments not certified may receive funds under the usual State grant procedures, but without certification may not participate in the guaranteed ten percent pass-through. By deleting the earlier provision, the Committee feels that the local governments will have more incentive to become fully certified, and avoid any ambiguity about the definition of 'making efforts' toward certification."

Section 61.7: One person suggested that a property within CLG jurisdictions should be eligible to receive funding even if the CLG itself does not receive funding.

Such properties are eligible for any available funding now, provided that they are included on the National Register of Historic Places.

Section 61.7: One person raised the issue as to whether CLG funds could be used anywhere in the community or just where the Boards [local commissions] are.

The Certified Local Government, not the local commission, is the grant recipient. HPF funds so awarded may be used anywhere within the jurisdiction of the local government as long as it is used within the parameters set by the State, this rule, and the *National Register Programs Manual*.

Section 61.7: One person wanted to know whether NPS could fund States or Certified Local Governments wishing to use HPF funds for activities not normally undertaken by preservation organizations but which are a vital function of some local architectural review boards, such as demolition or new construction permitting.

NPS will not dictate what activities a Certified Local Government or its preservation commission may or may not participate in. However, State activities eligible for HPF funding, as described in *The National Register Programs Manual*, are likewise eligible/fundable activities for CLGs. Conversely, activities that are not eligible/fundable for States are not fundable for CLGs either.

Section 61.7: One person raised issues similar to the one above. Does NPS approval of a State Certification process and CLGs limit CLGs to performance of HPF eligible activities even if they do not get HPF funding? If there is a Pass-Through Grant or a regular sub-grant the answer is clearly covered by this rule and *The National Register Programs Manual*. What if a CLG carries out HPF-ineligible activities and get HPF funding but doesn't use the funding (or matching funds) for the ineligible activities?

As long as CLGs do not use HPF or matching funds for an activity, they may carry out that activity, even though it is ineligible for HPF funding. This is analogous to an SHPO administering a State-funded development grants program when development is an ineligible HPF activity. So long as HPF and matching funds are not used and the HPF activity is separately accounted for, CLGs should have no compliance problems. The relationship between the State and individual CLGs is one of a subgrantee and all provisions of *The National Register Programs Manual* remain applicable.

Section 61.7(b): One comment suggested that in the grant eligibility portion, the rule should drop "10%" because the funds going to CLGs may be greater than 10% of a State's allocation.

The final rule adds "(or greater)" after "10%" rather than dropping "10%." This accomplishes the same purpose.

Section 61.7(f): Nine comments were received on the required content of the State allocation formula.

a. Three commentors recommended that the allocation of funds should be based on the importance of historical resources in the area and their relationship to the State Plan. In a related comment it was suggested that the capacity to carry out preservation

activities should be a prime allocation factor.

We are unwilling to place such restrictions on allocations at the beginning of this program. Initially, most States probably will want to consider putting the pass-through funds where they can be of most help in establishing a State-wide system of certified local governments. This means funds might go to a community whose interest in preservation is new rather than to a community with an effective and well established preservation effort. To promote the growth of State-wide systems of CLGs, the rule contains the requirement that the number of CLGs receiving funds be maximized (to the extent that each grant is effective) and that there also be an urban/rural spread among recipients. Once the CLG program becomes established and self-sustaining, it would be appropriate to increase the importance of the State plan as a tool for allocation of funds to CLGs.

b. One person suggested that there should be a required geographic spread around the State, not merely an urban/rural spread.

NPS encourages such a geographic spread as part of the urban/rural spread. However, to add the geographic spread as a requirement would create an unneeded level of complexity because the urban/rural spread should create the same results in most cases.

c. One comment asked for a definition of what a "reasonable" distribution between urban and rural CLGs means.

This, like a similar request to define "tangible results" (§ 61.7(f)(1)) cannot be met. No definition of "reasonable" can fit all appropriate funding situations. If a State can demonstrate that it made a good faith effort to fund CLGs in both urban and rural areas, it will meet this requirement.

d. One person suggested replacing the requirement to maximize the number of CLGs receiving funds with a requirement that no CLG receive a disproportionate share of available funds.

Language has been added requiring that no CLG receive a disproportionate share of available funds (as required by Section 103(d) of the Act), but the requirement to maximize the number of recipients has not been dropped. The concepts are different; one deals with the number of recipients, the other with the size of the award.

e. Two comments suggested adding language on matching requirements; i.e., that full match will not necessarily be required from every CLG. It's only the State's overall matching share that counts.

CLGs receiving HPF grant funds are considered subgrantees of the State (§ 61.7(c)). It is a State decision to determine the matching share that is required of each subgrantee. Nonetheless, the final rule notes that because the State program is required to produce only an aggregate match, "if excess funds are available from other sources, ability to provide matching funds need not be a primary allocation factor." Similarly, State agreements with CLGs should specify that costs questioned or disallowed must be repaid to the State.

Section 61.7(f): One person suggested adding language to the rule requiring that CLGs have an input in setting State funding priorities.

The final rule allows the CLGs to influence the allocation formula. § 61.7(f), (g), (h), and (n) taken together give CLGs and potential CLGs input into the development and operation of the State allocation formula for CLG pass-through. States must solicit comments from interested parties in the development of the formula; States must make available, upon request, the rationale for each allocation. NPS will monitor this process as part of the State Program Review Process.

Section 61.7(f): One comment stated that each State's proposed allocation procedures should go through the intergovernmental review process pursuant to E.O. 12372.

This would be an individual State requirement, and as such, its applicability need not appear in this rule.

Section 61.7(f): One person thought that there should be just a simple transfer of funds, not a requirement that CLGs submit applications for funding.

Because individual CLG needs are not equal and will not remain constant from year to year, transfer of funds to CLGs must be based on an application system. The application system also provides a basis for ensuring that the funds are used for eligible purposes.

Section 61.7(q): One person wanted to know how the allocation will be computed if there is no approved State program.

When there is no approved State program, the Secretary will assume the role normally held by the State and will allocate the funds based on the parameters set by this rule. This information will be contained in a new subsection, § 61.7(q), which has been prepared and will be published as a proposed rule in the near future.

Professional Qualifications Standards (Appendix A)

One person commented that the qualifications for Historian do not require expertise in American History.

In practice, this has not surfaced as a problem. Therefore, the current language will be retained. Clearly expertise in American History is advantageous. Any changes await a comprehensive study of the qualification standards.

Revisions

After consideration of comments and careful review, the National Park Service has made the following revisions to 36 CFR Part 61. Numerous editorial changes have also been made and the order and codification of specific sections has been adjusted.

Section 61.2(e): The phrase "for resource management" was dropped from the definition of comprehensive preservation planning.

Section 61.2(f): A definition for "comprehensive statewide historic preservation plan" has been added.

Section 61.2(k): "*The National Register Programs Manual*" is the superseding title of "*The HPF Grants Management Manual*." The definition has also been revised to better describe the function of the manual.

Section 61.2(m): A definition of "Secretary" has been added.

Section 61.2(n): A definition of "Secretary's Standards and Guidelines" has been added.

Section 61.3: A new section "Implementation of 36 CFR Part 61", has been added that explains the roles of *The National Register Programs Manual* and the Secretary's Standards and Guidelines.

Section 61.4(b)(1): Language has been added that elaborates on the SHPO responsibility to conduct survey and inventory.

Section 61.4(b)(2): 36 CFR Part 60, "National Register of Historic Places" has been referenced.

Section 61.4(b)(3): Language has been added elaborating on the State's comprehensive planning responsibility.

Section 61.4(b)(4): Language has been added that explains that administering the State program of Federal assistance includes (when applicable) the HPF Grants-In-Aid program.

Section 61.4(b)(7): Interpretive language has been added that explicitly includes the State's liaison responsibility as part of its public education requirement.

Section 61.4(c)(1): This paragraph has been revised to clarify that performance of the SHPO responsibilities listed in

§ 61.4(b) will be reviewed as part of the State program approval process. Reference to the authorization for Secretarial review and approval of State programs has been dropped because that material is covered in the procedures paragraph.

Section 61.4(c)(2): Reference is made to the publishing of proposed rules for the State program approval process.

Section 61.4(d)(3): Only the first sentence has been retained. The remaining language has been revised and/or put into new paragraphs (4), (5), or (6).

Section 61.4(d)(4): This new paragraph describes the immediate steps a State must take when a staff vacancy occurs. It emphasizes the necessity of providing immediate expertise for technical matters, at least on a temporary basis.

Section 61.4(d)(5): This new paragraph explains the steps to take if a required staff position lapses for 3 months. It retains the old language except that "NPS" replaces "the Secretary" as the State contact point.

Section 61.4(e)(1): A requirement has been added to the second sentence that all Review Board members shall "have demonstrated a competence, interest, or knowledge in historic preservation."

Section 61.4(e)(5): In the third sentence "shall suspend all decisionmaking related to the discipline of the vacant Review Board position" has been replaced by "shall take steps to ensure that temporary measures provide expertise so that the Review Board continues to operate as a professional body that can objectively evaluate the historic significance of properties and provide professional advice on historic resource matters."

Section 61.4(e)(6): A new sentence has been added to this paragraph that notes that objective professional judgments require the requisite professional expertise.

Section 61.4(h): This subsection was deleted and subsumed by § 61.3.

Section 61.5(b): The fourth sentence was deleted as being duplicative of § 61.5(c)(5).

Section 61.5(b): New language was added allowing States to vary delegations of responsibility between CLGs.

Section 61.5(b): New language was added explaining what, other than the required delegations, can and cannot be delegated to CLGs.

Section 61.5(b): A reminder was added that performance standards and regulations apply to functions even when delegated.

Section 61.5(c)(1): The second sentence was revised to make explicit that "appropriate" local legislation

"must be consistent with the purposes of the Act."

Section 61.5(c)(2): This paragraph was revised to apply the "interest, competence, or knowledge" requirement to all local commission members. Examples of "related disciplines" were added. The paragraph was also revised to make it clear that the local government appoints commission members.

Section 61.5(c)(2)(i): In the first sentence "shall" is replaced by "may," and language was added to emphasize that the local government appoints commission members.

Section 61.5(c)(2)(i): A new second sentence was added requiring that States not be more stringent for local commission membership than they are for membership on the State Review Board. As a consequence of this language, the final sentence of this subparagraph appearing in the proposed rule was deleted.

Section 61.5(c)(2)(i): A new third sentence was added stating that local government making a reasonable effort to find qualified professional members for their commissions, may be certified even if they are unsuccessful in their quest.

Section 61.5(c)(2)(i): Examples of sources that local commissions could consult for professional expertise were added.

Section 61.5(c)(2)(ii): "local government's" was inserted before "Commission" in the first sentence.

Section 61.5(c)(2)(iii): This new subparagraph requires that the States provide orientation and training to the local commissions.

Section 61.5(c)(4): National Register of Historic Places notification procedures were referenced.

Section 61.5(c)(5): A statement has been added that the Secretary will object within 30 working days if he/she disagrees with a State proposal to decertify a local government.

Section 61.5(d)(1): A new third sentence was added noting the circumstances in which CLG's could make nominations directly to the National Park Service.

Section 61.5(e): In two places "interested parties" was replaced by "parties likely to be interested" so as not to place an undue burden on the States.

Section 61.5(e): A new final sentence was added requiring States to retain their consultation records for possible examination by the Secretary.

Section 61.5(f): The "30" day notice and comment period was replaced by a "60" day period; and, "interested

parties" was replaced by "parties likely to be interested."

Section 61.5(f): A final sentence was added that notes that States should be able to respond to all unadopted comments on their procedures.

Section 61.5(i): This subsection has been revised by establishing a requirement for a written certification agreement between the State and the local government.

Section 61.5(j): This new subsection was added to explain amendments to certification agreements.

Section 61.5(k): This new subsection was added to explain amendments to approved State processes for certification and funds transfer.

Section 61.5(l): Language was added concerning local government appeals of State decisions to deny certification or to decertify.

Section 61.5(n): Old § 61.5(l) was revised to reference the publishing proposed rules for the reserved section.

Section 61.5: Old § 61.5(m) was deleted because it was subsumed by § 61.3.

Section 61.6(a): This subsection was revised to make carrying out SHPO responsibilities the first mentioned purpose of HPF grants-in-aid.

Section 61.6: Old § 61.6(e) was deleted because it was subsumed by § 61.3.

Section 61.7(b): "Or greater" was inserted after "ten percent" in the first sentence.

Section 61.7(f): This subsection was revised to note that because of State aggregate program matching requirements, there need not be a 50% matching share requirement for every CLG.

Section 61.7(g)(1): "Measureable" was replaced by "tangible."

Section 61.7(f)(2): A new final sentence has been added stating that "no CLG may receive a disproportionate share of the allocation."

Section 61.7(h): The "30" day notice and comment period was replaced by a "60" day period; and, "interested parties" was replaced by "parties likely to be interested."

Section 61.7(q): Old § 61.7(q) was deleted because it was subsumed by § 61.3. It has been replaced by a reference to the publishing of proposed procedures for the transfer of grants to CLGs where there is no approved State program.

Authority: National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

Classification: These rules are not substantive and deal with procedural aspects of State and local historic preservation programs. In accordance

with Executive Order 12291, the Department of the Interior has determined that these rules are not major. The rules will not require States to assume significant additional costs. Local government certification under these rules is strictly voluntary. Additional expenses that may be incurred by local governments will be as a result of their decision to seek certification. In accordance with the Regulatory Flexibility Act, the Department of the Interior has determined that these rules will not have a significant economic effect on a substantial number of small entities. Additional expenses that may be incurred by small local governments will be the result of their decision to seek certification. The information collection requirements contained in this part have been approved and assigned clearance number 1024-0038 by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Regulatory Analysis: Not required for this rulemaking.

Environmental Impact Statement: This regulation does not significantly impact the environment. Because these rules have to do with procedural aspects of State and local historic preservation programs and have no impact on the environment, an Environmental Impact Statement is not required.

The originators of these procedures are Hardy L. Pearce and John W. Renaud of the Interagency Resources Division of the National Park Service (202/343-9505).

List of Subjects in 36 CFR Part 61

Grant programs, Natural resources, Historic Preservation.

Dated: December 5, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set out above, 36 CFR Part 61 is revised to read as follows:

PART 61—PROCEDURES FOR APPROVED STATE AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

Sec.

- 61.1 Authorization.
- 61.2 Definitions.
- 61.3 Implementation of 36 CFR Part 61.
- 61.4 Approved State Programs.
- 61.5 Approved Local Programs.
- 61.6 Grants to Approved State Programs.
- 61.7 Transfer of Grants to Certified Local Governments.
- 61.8 Waiver.
- 61.9 Information Collection Requirements.
- Appendix A. Professional Qualifications Standards
- Appendix B. Information Sources

Authority: National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

§ 61.1 Authorization.

The National Historic Preservation Act of 1966, 16 U.S.C. 470 et. seq., as amended:

(a) Requires the Secretary of the Interior (Secretary) to promulgate regulations for:

- (1) Approving State historic preservation programs;
- (2) Certifying local governments to carry out the purposes of the Act;
- (3) The allocation by States of a share of the grants received by the States under the Act to certified local governments (CLGs);

(b) Directs the Secretary to conduct performance evaluations of State programs periodically;

(c) Directs the Secretary to administer a program of matching grants-in-aid to the States for historic preservation projects and programs approved by the Secretary;

(d) Requires the Secretary to establish guidelines for the use and distribution of funds transferred to local governments to ensure that no local government receives a disproportionate share of the funds available; and

(e) Requires the Secretary to make information available concerning professional methods and techniques for the preservation of historic properties and the administration of historic preservation programs.

§ 61.2 Definitions.

As used in this part:

(a) "Approved State program" means a State historic preservation program that has been approved by the Secretary of the Interior in accordance with Sec. 101(b) of the *National Historic Preservation Act, as amended*. All State programs will be treated as approved programs until December 12, 1983, unless specifically disapproved by the Secretary before that time.

(b) "Certified local government" means a local government that has been certified to carry out the purposes of the *National Historic Preservation Act, as amended*, in accordance with section 101(c) of the Act.

(c) "Chief elected local official" means the elected head of a local government.

(d) "CLG share" means the funding authorized for transfer to local governments in accordance with section 103(c) of the *National Historic Preservation Act, as amended*.

(e) "Comprehensive historic preservation planning" means an ongoing process that is consistent with technical standards issued by the Department of the Interior and which

produces reliable, understandable, and up-to-date information for decisionmaking related to the identification, evaluation, and protection/treatment of historic resources.

(f) "Comprehensive statewide historic preservation plan" means the part of the planning process that conforms to the Secretary's Standards for Preservation Planning and is approved as part of the State Program Approval Process. The comprehensive plan entails the organization into a logical sequence of preservation information pertaining to identification, evaluation, registration, and treatment of historic properties, and setting priorities for accomplishing preservation activities.

(g) "Historic Preservation Fund" means the monies accrued under the Outer Continental Shelf Lands Act, as amended, to support the program of matching grants-in-aid to the States for historic preservation programs and projects, as authorized by Sec. 101(d)(1) of the *National Historic Preservation Act, as amended*.

(h) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established in accordance with § 61.4 (c)(2) of these rules.

(i) "Local government" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(j) "National Register of Historic Places" means the national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture, maintained by the Secretary of the Interior under authority of section 101(a)(1)(A) of the *National Historic Preservation Act, as amended*.

(k) "The National Register Programs Manual" means the manual that sets forth NPS administrative procedures and guidelines for activities concerning the federally related historic preservation programs of the National Trust for Historic Preservation, the States, and local governments. This manual includes guidelines and procedures for the administration of the historic preservation grants-in-aid program, and supercedes the *HPF Grants Management Manual*.

(l) "National Park Service" means the bureau of the Department of the Interior to which the Secretary of the Interior has delegated the authority and responsibility for administering the National Historic Preservation Program.

(m) "Secretary" means the Secretary of the Interior. Unless otherwise stated in law or regulation, the Secretary has

delegated the authority and responsibility for administering the National Historic Preservation Program to the National Park Service.

(n) "Secretary's Standards and Guidelines" means the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*. The Standards and Guidelines provide technical information about archeological and historic preservation activities and methods. The Standards and Guidelines are prepared under the authority of Sections 101(f), (g), and (h), and Section 110 of the Act. The subjects covered in the Standards and Guidelines may include: Preservation Planning, Identification, Evaluation, Registration, Historic Research and Documentation, Architectural and Engineering Documentation, Archeological Investigation, Historic Preservation Projects, and Preservation Terminology.

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

(p) "State Historic Preservation Officer" is the official within each State who has been designated and appointed by the Governor to administer the State historic preservation program in the State.

(q) "State Program" means the State historic preservation program in the State.

(r) "Subgrantee" means the agency, institution, organization or individual to which a subgrant is made by the State and which is accountable to the State for use of the funds provided.

§ 61.3 Implementation of 36 CFR Part 61.

(a) *The National Register Programs Manual*. The National Park Service maintains this Manual for the use of the States, Certified Local Governments, and the National Trust for Historic Preservation in performing federally related historic preservation activities authorized by the *National Historic Preservation Act, as amended*.

(1) The Manual is the vehicle through which the National Park Service implements 36 CFR Part 61.

(2) The Manual provides guidelines and procedures for approved historic preservation programs to use matching grant assistance for preservation program activities.

(3) The Manual does not include technical information on preservation techniques.

(b) The Secretary of the Interior's Standards and Guidelines. *The National Register Programs Manual* includes *The*

Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The Standards and Guidelines apply to federally authorized activities and will be used by the National Park Service as the technical performance standards for matters covered by these rules.

(c) Availability of *The National Register Programs Manual*.

(1) Copies of the Manual may be obtained from the National Park Service.

(2) The National Park Service issues updates of the Manual as necessary and annually issues a summary of all additions, changes, or deletions made during the previous fiscal year.

§ 61.4 Approved State Programs.

(a) A State Historic Preservation Officer (SHPO) shall be appointed by the Governor to administer the State historic preservation program.

(b) It shall be the responsibility of the SHPO to:

(1) Direct and conduct a comprehensive statewide survey of historic properties and maintain an inventory of such properties; this high priority responsibility entails locating historic and archeological resources at a level of documentation such that the resources can be evaluated for potential nomination to the National Register of Historic Places and so that the survey data collected can be incorporated into State priorities and planning decisions concerning the area surveyed;

(2) Identify and nominate eligible properties to the National Register of Historic Places and otherwise administer applications for the National Register (see 36 CFR Part 60: "National Register of Historic Places");

(3) Prepare and implement a comprehensive statewide historic preservation planning process; this high priority responsibility entails the organization of preservation activities (identification, evaluation, registration, and treatment of historic properties) into a logical interrelated sequence so that effective and efficient decisions and/or recommendations can be made concerning preservation in the State;

(4) Administer the State program of Federal assistance for historic preservation within the State; if Historic Preservation Fund (HPF) monies are appropriated, this includes the administration of the HPF Grant-in-Aid program;

(5) Advise and assist Federal, State, and local government agencies in carrying out their historic preservation responsibilities;

(6) Cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal, State,

and local government agencies to ensure that historic properties are taken into consideration at all levels of planning and development;

(7) Provide public information, education, training, and technical assistance relating to the National and State historic preservation programs; and otherwise fulfill the State's liaison responsibility with the Federal preservation programs, other States, local governments, Indian tribes, private organizations, and individuals;

(8) Cooperate with local governments in development of local historic preservation programs and assist local governments in becoming certified.

(c)(1) State programs shall be approved by the Secretary if he determines that the program meets the requirements of paragraphs (a), (b), (d), (e), and (f) of this section. Compliance with these requirements shall be evaluated by the Secretary as required by § 61.4 of these regulations. These evaluations shall determine the State's continued eligibility for approved program status.

(2) Procedures [Reserved].

(d) A professionally qualified staff shall be appointed or employed by the State historic preservation program.

(1) Except as approved pursuant to paragraph (d)(2) of this section, the staff shall include at a minimum, one full-time professional in each of the following disciplines: history, archeology, and architectural history. Required professional State staff members shall meet the standards set forth in Appendix A to these rules. Two or more part-time staff members may be substituted for one full-time professional in any of the required disciplines as long as the equivalent of one full-time professional is achieved in each discipline. States shall determine what other professional disciplines, such as planning, law, architecture, historic architecture, historical archeology, accounting and grants management are needed to carry out the responsibilities of the State historic preservation program. State professional staff members approved by the Secretary prior to September 21 1977, shall remain approved until such time that they are no longer employed on the State staff.

(2) The Secretary will consider proposals submitted by States for alternative staffing requirements for States with resources and needs which cannot be served or met by the composition outlined in paragraph (d)(1) of this section. Such alternative requirements must ensure adequate professional expertise on the staff, comparable to that required in

paragraph (d)(1) of this section, to perform the required responsibilities of the State. These proposals will be reviewed and approved by the Secretary in writing on a State-by-State basis. Approved alternatives will remain in effect until they are reviewed, at the Secretary's discretion, or at the request of the State.

(3) The State shall annually certify according to procedures provided by the Secretary that the State program meets the minimum staffing requirements.

(4) When a required staff position becomes vacant, and if the expertise of the person filling that position is required by law, regulation, or implementing procedure the State shall take immediate steps to ensure that the requisite expertise is replaced. This may be done on a temporary basis (such as by contracting the responsibility) pending the permanent filling of the vacant required staff position. Measures taken pursuant to § 61.4(d)(2) or § 61.8 are other possible techniques to follow. However, States should ensure that technical matters are addressed by the corresponding technical expertise.

(5) If these requirements for permanent required staff are not met for a period exceeding three months, the State shall communicate by letter to NPS, the timetable for filling the vacancy, or propose an alternative pursuant to paragraph (d)(2) of this section.

(6) If the lapse in staffing requirements persists for more than six months, the Secretary may require further restrictions in State program operations or HPF financial assistance that will remain in effect until the staff vacancy has been filled or an alternative has been approved by the Secretary pursuant to paragraph (d)(2) of this section.

(e) An adequate and qualified State historic preservation Review Board shall be designated by the SHPO unless an alternative method of appointment is provided by State law.

(1) The State Review Board shall consist of at least five persons. The Review Board shall consist of members who have demonstrated a competence, interest, or knowledge in historic preservation and a majority of Review Board members shall be recognized professionals in the following and related disciplines defined in Appendix A to these rules. Except as approved pursuant to paragraph (e)(4) of this section, the membership shall include a minimum of one professional in each of the following disciplines: history, prehistoric and historic archeology, and architectural history and architecture. All of these professionals shall meet the

standards set forth in Appendix A. The State shall determine what other professional disciplines and/or additional members are needed.

(2) The archeologist shall be qualified in both prehistoric and historic archeology, or an additional qualified person shall be appointed to the State Review Board so that expertise in both prehistoric and historic archeology will be represented.

(3) The architectural historian or architect shall be qualified in both architectural history and architecture or an additional qualified person shall be appointed to the State Review Board so that expertise in both architectural history and architecture will be represented.

(4) The Secretary will consider proposals for alternative Review Board requirements for States with historic resources and needs which cannot be served or met by the composition outlined in paragraph (e)(1) of this section. Such alternative requirements must ensure adequate professional expertise on the Review Board, comparable to that required in paragraph (e)(1) of this section to perform the responsibilities of the Review Board. Such proposals will be reviewed and approved in writing by the Secretary on a State-by-State basis. Approved alternatives will remain in effect until they are reviewed, at the Secretary's discretion, or at the request of the State.

(5) The State shall annually certify according to procedures provided by the Secretary that the State program meets the minimum Review Board requirements. If these requirements are not met for a period exceeding three months, the State shall communicate by letter to the Secretary, the timetable for filling the vacancy, or propose to NPS an alternative pursuant to paragraph (e)(4) of this section. During such lapse in minimum Review Board requirements, the State shall take steps to ensure that temporary measures provide expertise so that the Review Board continues to operate as a professional body that can objectively evaluate the historic significance of properties and provide professional advice on historic preservation matters. If a lapse in Review Board requirements persists for more than six months, the Secretary may require further restrictions in State program operations or HPF financial assistance to remain in effect until the Review Board vacancy has been filled or an alternative has been proposed and approved by the Secretary pursuant to paragraph (e)(4) of this section.

(6) The State Review Board shall meet at least three times a year and shall

adopt procedures governing its operations consistent with the provisions of this section. In making decisions the Review Board must have access to the expertise necessary to make objective professional judgments.

(7) The responsibilities that the State Review Board performs include, but need not be limited to, the following:

(i) Reviewing each National Register nomination proposal prior to submission to the National Register to determine whether or not the property meets the National Register criteria for evaluation, and to make a recommendation that the State nominate or reject the proposed nomination;

(ii) Participating in the review of appeals to National Register nominations and providing written opinions on the significance of the properties;

(iii) Providing advice to the State about documentation submitted in conjunction with the Historic Preservation Fund including but not limited to grant applications, end-of-year reports, and the State comprehensive historic preservation planning process;

(iv) Providing general advice, guidance, and professional recommendations to the SHPO in carrying out the duties and responsibilities listed in § 61.4(b).

(f) Mechanisms shall be provided for adequate public participation in the State historic preservation program. As part of the process of recommending properties to the National Register, the State shall comply with all consultation and notification procedures contained in 36 CFR Part 60.6.

(g) Any State may carry out all or any part of its responsibilities by contract or cooperative agreement with any qualified nonprofit organization, educational institution or otherwise pursuant to State law. A State may not delegate its responsibility for compliance with grant assistance terms and conditions.

§ 61.5 Approved Local Programs.

(a) All approved State programs shall provide a mechanism for certifying local governments to participate in the National program.

(b) All approved State historic preservation programs shall develop, for approval by the Secretary, procedures for the certification of local governments. Procedures also shall be defined for removal of CLG status for cause. States shall indicate specific requirements for certification, specific responsibilities that will be delegated to certified local governments (CLGs), and

the schedule for the certification process. The requirements outlined in paragraph (c) of this section must be incorporated into the State's process for local certification that is submitted to the Secretary for approval. Beyond the minimum delegations of authority that must be made to all CLGs, States may make additional delegations of responsibility to individual CLGs. These delegations may not include the State's overall responsibility derived from the *National Historic Preservation Act, as amended*, or where specified by law or regulation (e.g., the operations of the Review Board and nominations to the National Register). Regulations and standards governing performance of State functions (e.g., rules relating to conflict of interest) are to be enforced by States when the functions are delegated.

(c) States shall require local governments to satisfy the following minimum requirements:

(1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State shall define what constitutes appropriate legislation so long as it is consistent with the purposes of the Act. Where State enabling legislation or home rule authority permits local historic preservation ordinances, a State may require adoption of an ordinance and indicate specific provisions that must be included in the ordinance.

(2) Establish by State or local law an adequate and qualified historic preservation review commission (Commission) composed of professional and lay members. All Commission members shall have a demonstrated interest, competence, or knowledge in historic preservation. To the extent available in the community, the local government shall appoint professional members from the disciplines of architecture, history, architectural history, planning, archeology, or other historic preservation related disciplines, such as urban planning, American Studies, American Civilization, Cultural Geography, or Cultural Anthropology.

(j) States may specify the minimum number and type of professional members that the local government shall appoint to the Commission and indicate how additional expertise can be obtained. Requirements set by the State for local Commissions shall not be more stringent or comprehensive than its requirements for the State Review Board. Local governments may be certified without the minimum number or types of disciplines if they can demonstrate that they have made a reasonable effort to fill those positions. When a discipline is not represented in the Commission membership, the

Commission shall be required to seek expertise in this area when considering National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such discipline. This can be accomplished through consulting (e.g., universities, private preservation organizations, or regional planning commissions) or by other means that the State determines appropriate.

(ii) States shall specify the role and responsibilities of the local government's Commission in local preservation decisions. These responsibilities must be complementary to and carried out in coordination with those of the State as outlined in § 61.4(b) of these rules.

(iii) States shall make available orientation materials and training to all local Commissions. The orientation and training shall be designed to provide a working knowledge of the roles and operations of Federal, State, and local preservation programs.

(3) Maintain a system for the survey and inventory of historic properties. States shall formulate guidelines for local survey and inventory systems which ensure that such systems and the data they produce can be readily integrated into statewide comprehensive historic preservation planning and other appropriate planning processes. Local government survey and inventory efforts shall be coordinated with and complementary to those of the State. The State also shall require that local survey data be in a format that is consistent with the planning processes noted above.

(4) Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register. States shall require adequate public participation in relation to all responsibilities that are delegated to CLGs. States shall outline specific mechanisms to ensure adequate public participation in local preservation programs. These may include requirements for open meetings, published minutes, and the publication of procedures by which assessments of potential National Register nominations, design review, etc. will be carried out as well as compliance with appropriate regulations. National Register notification requirements may be found in 36 CFR Part 60.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. States shall monitor and evaluate the performance of CLGs. States shall outline procedures and standards by which the performance of CLGs in program operation and administration

will be evaluated. Written records shall be maintained for all State evaluations of CLGs so that results are available for the Secretary's performance evaluations of States. If a State evaluation of a CLG's performance indicates that, in the State's judgment, such performance is inadequate, the State shall suggest ways to improve performance. If, after a period of time stipulated by the State, the State determines that there has not been sufficient improvement, it may recommend decertification of the local government to the Secretary for his concurrence. This recommendation shall cite the specific reasons why decertification is proposed. If the Secretary does not object within 30 working days of receipt, the decertification shall be considered approved by the Secretary. Appropriately documented State recommendations for decertification ordinarily will be accepted by the Secretary. When a local government is decertified, the State shall conduct financial assistance closeout procedures as specified in *The National Register Programs Manual*.

(d) Effects of certification:

(1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with Sections 101 (c)(2)(A) and (c)(2)(B) of the Act. The State may delegate to a CLG any of the responsibilities of the SHPO and the State Review Board in processing National Register nominations as specified in 36 CFR Part 60, except for the authority to review and nominate properties directly to the National Register. CLGs may make nominations directly to the National Park Service only when the State does not have an approved program. States shall ensure that CLG performance of these responsibilities is consistent and coordinated with the identification, evaluation, and preservation priorities of the comprehensive State historic preservation planning process.

(2) Eligibility to apply for a portion of the State's annual HPF grant. At least 10 percent of the State's annual HPF apportionment shall be set aside for transfer to CLGs. All CLGs in the State shall be eligible to receive funds from the designated CLG share of the State's annual HPF grant; no government, however, is automatically entitled to receive funds. Local governments that receive these monies shall be considered subgrantees of the State.

(3) The requirements set forth in paragraph (c) of this section may be amplified by the Secretary and/or the States as necessary to reflect particular

State and or local government program concerns.

(e) States shall submit, within 180 days of publication of the final rule for local certification and funds transfer, their proposed local certification processes to the Secretary for review and approval. In developing the submission, the State shall consult with local governments, local historic preservation commissions, and all other parties likely to be interested in the CLG process; consider local preservation needs and capabilities; and invite comments on the proposed process from local governments, commissions, and parties in the State likely to be interested. The State's proposal shall review the results of this consultation process. States shall keep a record of their consultation processes and make them available to the Secretary upon request.

(f) States shall establish procedures to ensure that all parties likely to be interested are notified and provide a 60-day period for public comment on the proposal before it is submitted to the Secretary. Records of all comments received during the commenting period shall be kept by the State and shall be made available to the Secretary upon request. The State should be able to respond to all suggestions that it does not adopt.

(g) The Secretary shall review State proposals and within 90 days of receipt issue an approval or disapproval. This review will be based on compliance with all requirements set forth in this section.

(h) If a State proposal is disapproved, the Secretary will recommend changes that would make the proposed process acceptable and, in consultation with the State, will designate a date by which the revision must be submitted. Final approval by the Secretary must be achieved by October 1, 1985, or States will be ineligible to continue their approved State program status beyond that time.

(i) A State may begin certification of local governments as soon as the State's proposed certification process is approved by the Secretary. When a local government certification request has been approved in accordance with the State's approved certification process, the State shall prepare a written certification agreement that lists the specific responsibilities of the local government when certified. The State shall forward to the Secretary a copy of the approved request and the certification agreement. If the Secretary does not take exception to the request within 15 working days of receipt, the

local government shall be regarded as certified by the Secretary.

(j) A State may agree with a CLG to change the delegation of responsibilities by amending the certification agreement. The State must submit the amendment to the National Park Service for review to ensure that it is in conformance with the approved State process, this rule, and the Act. If the National Park Service does not object within 15 working days, the amendment shall be considered approved.

(k) States may amend their approved State certification and funds transfer processes. In developing the amendment, the State shall follow to the extent appropriate the same consultation procedures outlined in § 61.5(e)/(f) and § 61.7(g)(h). The State shall submit the proposed amendment to the National Park Service. The National Park Service shall review the proposed amendment for conformance with this rule and the Act, and, within 45 working days of receipt, issue an approval or disapproval notice.

(l) State administration of its local certification process shall be reviewed by the Secretary during performance evaluations and audits of State programs as required by section 101(b)(2) of the *National Historic Preservation Act, as amended*. Local governments may appeal to the Secretary State decisions to deny certification or to decertify. Appealed actions shall be examined for conformance with approved State procedures for CLGs, these regulations, and the Act.

(m) The District of Columbia shall be exempted from the requirements of section 61.5 because there are no subordinated local governments in the District. If a territory believes that its political subdivisions lack authorities similar to those of local governments in other States and hence cannot satisfy the requirements for local certification, it may apply to the Secretary for exemption from the requirements of § 61.5.

(n) Procedures for direct certification by the Secretary where there is no approved State program [Reserved].

§ 61.6 Grants to Approved State Programs.

(a) All States with approved State historic preservation programs shall be eligible for matching grants-in-aid from the Historic Preservation Fund for carrying out the responsibilities of the SHPO including preparing comprehensive statewide historic surveys and plans, and for preserving and protecting properties listed in the National Register of Historic Places.

(b) Administration of HPF matching grants-in-aid shall be in accordance with *The National Register Programs Manual*. States receiving HPF grants shall adhere to the procedures and guidelines in *The National Register Programs Manual* and its supplements.

(c) States are responsible, through financial audit, for the proper accounting of HPF grants in accordance with OMB Circular A-102, Attachment P, "Audit Requirements," and *The National Register Programs Manual*.

(d) States are responsible, through the program performance evaluation requirements of § 61.4(c), for administration of HPF grants in accordance with the requirements of this section.

§ 61.7 Transfer of Grants to Certified Local Governments.

(a) At least 10 percent of each State's annual HPF allocation shall be designated for transfer by States to CLGs as subgrants. States may transfer more than 10 percent unless otherwise prohibited. Any year in which the annual HPF State grant appropriation exceeds \$65,000,000, one half of the excess shall also be transferred to CLGs according to procedures to be provided by the Secretary.

(b) All CLGs shall be eligible to receive funds from the 10 percent (or greater) CLG share of the State's total annual HPF grant award. The State is not required to award funds to all governments that are eligible to receive funds.

(c) CLGs receiving HPF grants from the CLG share shall be considered subgrantees of the State. Transferred monies shall not be applied as matching share for any other Federal grant.

(d) States shall require all local governments receiving a portion of the local share of the State's annual HPF grant to satisfy the following minimum requirements:

(1) Maintain adequate financial management systems. Local financial management systems shall be in accordance with the standards specified in OMB Circular A-102, Attachment G, "Standards for Grantee Financial Management Systems." Local financial management systems shall be auditable in accordance with the General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*. States shall be responsible, through financial audit, for the proper accounting of HPF CLG share monies in accordance with OMB Circular A-102, Attachment P, "Audit Requirements." The periodic State evaluations of CLG

performance shall include an assessment of the fiscal management of HPF monies.

(2) Adhere to all requirements of *The National Register Programs Manual*. The *National Register Programs Manual* sets forth administrative procedures and policies for HPF grants awarded by the Secretary. It serves as a basic reference for the State management of HPF grants. Indirect costs may be charged as part of the CLG grant only if the CLG subgrantee meets the requirements of the Manual. Unless the CLG has a current indirect cost rate approved by the cognizant Federal agency, only direct costs may be charged.

(3) Adhere to any requirements mandated by Congress regarding the use of such funds. The Secretary will advise States of any directives contained in annual appropriations laws regarding the use of HPF State grants that must be applied to local governments receiving a share of these grants.

(e) The requirements listed in paragraph (d) of this section shall be used by States as minimum requirements for local governments receiving HPF funds; they also shall be included in the State's required written grant agreement with the local government. States may require specific uses of funds as long as such requirements are consistent with the State comprehensive historic preservation planning process and are eligible for HPF assistance.

(f) Each State shall develop, for approval by the Secretary, a procedure for allocating the CLG share of its annual Historic Preservation Fund grant to eligible local governments in the State. States shall articulate a clear rationale on which funding decisions will be based. Although only aggregate program matching funds are required, States may require a matching share for CLG grants, but if excess matching funds are available from other sources, ability to provide matching funds need not be a primary allocation factor. Allocation procedures shall include guidelines for the review of applications and the selection of applicants. At a minimum, these guidelines shall include the following:

(1) The amount awarded to any applicant must be sufficient to produce a specific impact. While no lower limit is prescribed by these rules, States must ensure that the funds awarded are sufficient to generate effects directly as a result of the funds transfer. The requirement for tangible results may not be waived even if there are many otherwise eligible applicants for the amount set aside for CLG share; States may use additional funds from their

regular HPF annual grant to satisfy competing demands.

(2) To promote local preservation activities, States shall make reasonable efforts to distribute these monies among the maximum number of eligible local jurisdictions to the extent that such distribution is consistent with paragraph (f)(1) of this section. States also shall seek to ensure a reasonable distribution between urban and rural areas in the State. States must ensure that no CLG receives a disproportionate share of the allocation.

(3) States shall make available to the public, upon request, the rationale for the applicants selected and the amounts awarded.

(g) Within 180 days of publication of final rules for local certification and funds transfer, but not before submitting their proposed local certification process, States shall submit to the Secretary for review and approval their proposed procedure for transfer of funds.

(h) States shall set up notice procedures to ensure that all parties likely to be interested are notified and provide a 60-day period for public comment on the proposal before it is submitted to the Secretary. Records of all comments received during the commenting period shall be kept by the State and shall be made available to the Secretary upon request.

(i) The Secretary shall review State proposals and within 90 days of receipt issue an approval or disapproval. This review will be based on compliance with the requirements set forth in this section.

(j) If a State proposal is disapproved, the Secretary will recommend changes that would make the proposed process acceptable and, in consultation with the State, will designate a date by which the revision must be submitted. Final approval by the Secretary must be achieved by October 1, 1985, or States will be ineligible to continue their approved State program status beyond that time.

(k) Once a State's proposed process for funds transfer has been approved by the Secretary and the Secretary has obligated the State's annual HPF grant, the State shall begin the transfer of HPF monies unless otherwise prohibited as a consequence of actions described in § 61.7(d)(3).

(l) Each State shall ensure that its procedure is widely publicized so that all eligible local governments have the opportunity to apply for funding.

(m) States shall be responsible for reviewing requests from CLG subgrantees for grant amendments as required by OMB Circular A-87, and for

issuing approval or denial of such requests. If any action by a CLG will result in a change in the overall grant project or budget requiring NPS approval, the State shall obtain such approval prior to granting approval to the CLG subgrantee. A State shall not forward to NPS any action which is inconsistent with the purpose or terms of the grant. CLG subgrantee requests for revisions to the grant are invalid unless they are in writing and signed by an authorized official of the State grantee.

(n) State performance in transferring funds to CLGs shall be reviewed by the Secretary during performance evaluations and audits of State programs as required by Sec. 101(b)(2) of the *National Historic Preservation Act*, as amended.

(o) States may submit grant amendment requests to NPS to reallocate monies set aside for local governments in instances where no certified governments exist, wish to receive funds, or are qualified to receive funds. Such requests will be considered grant reprogramming actions and shall be submitted to NPS not less than one calendar year after the beginning of the fiscal year of the State's HPF appropriation. All such requests shall clearly document the State's attempts to encourage and assist local governments in developing local historic preservation programs pursuant to Section 61.5 of these regulations, in being certified, and in applying for funding.

(p) The District of Columbia shall be exempted from the requirements of § 61.7 because there are no subordinate local governments in the District. If a territory believes that its political subdivisions lack authorities similar to those of local governments in other States and hence cannot satisfy the requirements for local certification, it may apply to the Secretary for exemption from the requirements of § 61.7.

(q) Procedures for transfer of grants to CLGs where there is no approved State program. [Reserved]

§ 61.8 Waiver.

The Secretary may waive any of the requirements of these rules which are not mandated by statute or by government-wide regulations, if, in his/her opinion, as expressed in writing to the State, the State historic preservation program would benefit from such waiver, and the purposes, conditions, and requirements of the *National Historic Preservation Act*, as amended, would not be compromised.

§ 61.9 Information Collection Requirements.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507, *et seq.*, and assigned clearance number 1024-0038. The information is being collected as part of the process of reviewing the procedures and programs of State and local governments participating in the National historic preservation program. The information will be used to evaluate those procedures and programs. The obligation to respond is required to obtain a benefit.

Appendix A. Professional Qualifications Standards

In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

(a) *History*. The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

(1) At least two years of full-time experience in research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(b) *Archeology*. The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

(1) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(2) At least four months of supervised field and analytic experience in general North American archeology; and

(3) Demonstrated ability to carry research to completion.

In addition, to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(c) *Architectural history*. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

(1) At least two years of full-time experience in research, writing, or teaching in

American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

(2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

(d) *Architecture*. The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a State license to practice architecture.

(e) *Historic Architecture*. The minimum professional qualifications in historic architecture are a professional degree in architecture of State license to practice architecture, plus one of the following:

(1) At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or

(2) At least one year of full-time professional experience on historic preservation projects. Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specification for preservation projects.

Appendix B. Information Sources.

The following National Park Service Regional Offices and State Historic Preservation Offices are sources of information concerning the programs covered by these regulations.

Alaska Regional Office

Alaska Regional Office, 2520 Gambell Street, Anchorage, Alaska 99503, 907-277-1666

Alaska: Chief of History and Archeology, Division of Parks, Department of Natural Resources, 619 Warehouse Avenue, Suite 210, Anchorage, Alaska 99501, 907-274-4646

Mid-Atlantic Region

Mid-Atlantic Region, 143 South Third St., Philadelphia, PA 19106, 215-597-8068

Connecticut: Connecticut Historical Commission, 59 South Prospect Street, Hartford, Connecticut 06106, 203-566-3005

Delaware: Division of Historical & Cultural Affairs, Hall of Records, Dover, Delaware, 19901, 302-678-5314

District of Columbia: Dept. of Consumer and Regulatory Affairs, 614 H Street, NW., Washington, D.C. 20001, 202-535-1500

Indiana: Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204, 317-232-4020

Maine: Maine Historic Preservation Commission, 55 Capitol Street, Station 65, Augusta, Maine 04333, 207-289-2132

Maryland: State Historic Preservation Officer John Shaw House, 21 State Circle, Annapolis, Maryland 21401, 301-269-2851

Massachusetts: Massachusetts Historical Commission, 294 Washington Street, Boston, Massachusetts 02108, 617-727-8470

Michigan: Michigan History Division, Department of State, Lansing, Michigan 48918, 517-373-6362

New Hampshire: Department of Resources & Economic Development, P.O. Box 856,

Concord, New Hampshire 03301, 603-271-3484 or 3558

New Jersey: Department of Environmental Protection, CN 402, Trenton, New Jersey 08625, 609-292-2885

New York: Office of Parks Recreation & Historic Preservation, Agency Building #1, Empire State Plaza, Albany, New York 12238, 518-474-0468

Ohio: State Historic Preservation Officer, The Ohio Historical Society, Interstate 71 at 17th Avenue, Columbus, Ohio 43211, 614-466-1500

Pennsylvania: State Historic Preservation Officer, Pennsylvania Historical & Museum Commission, P.O. Box 1026, Harrisburg, Pennsylvania 17120, 717-787-2891

Commonwealth of Puerto Rico: Office of Cultural Affairs, La Fortaleza, San Juan, Puerto Rico 00901, 809-724-2100

Rhode Island: Rhode Island Department of Community Affairs, 150 Washington Street, Providence, Rhode Island 02903, 401-277-2850

Vermont: Secretary, Agency for Development & Community Affairs, Pavilion Office Building, Montpelier, Vermont 05602, 802-828-3226

Virgin Islands: Virgin Islands Planning Board, Charlotte Amalie, St. Thomas, Virgin Island 00801, 809-774-7859

Virginia: Virginia Historic Landmarks Commission, 221 Governor Street, Richmond, Virginia 23219, 804-786-3142

West Virginia: Department of Culture & History, State Capitol Complex, Charleston, West Virginia 25304, 304-348-0244

Rocky Mountain Region

Rocky Mountain Region, P.O. Box 25287, Denver Federal Center, Denver, CO 80225, 303-234-2560

Colorado: State Historic Preservation Officer, Colorado Heritage Center, 1300 Broadway, Denver, Colorado 80203, 303-866-3394

Illinois: Department of Conservation, 405 East Washington, Springfield, Illinois 62706, 217-782-3340

Iowa: Iowa State Historical Dept., Office of Historic Preservation, Historical Building, East 12th Street and Grand Avenue, Des Moines, Iowa 50319, 515-281-5113

Kansas: Kansas State Historical Society, 120 West 10th Street, Topeka, Kansas 66612, 913-296-3251

Minnesota: Minnesota Historical Society, 690 Cedar Street, St. Paul, Minnesota 55101, 612-296-2747

Missouri: State Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65101, 314-751-4422

Montana: Montana Historical Society, 225 North Roberts Street, Veterans Memorial Building, Helena, Montana 59601, 406-449-2694

Nebraska: The Nebraska State Historical Society, 1500 R Street, Lincoln, Nebraska 68508, 402-471-3850

New Mexico: Historic Preservation Division, Office of Cultural Affairs, Villa Rivera, Room 101, 228 E. Palace Avenue, Santa Fe, New Mexico 87503, 505-827-8320

North Dakota: State Historical Society of North Dakota, Liberty Memorial Building,

Bismarck, North Dakota 58501, 701-224-2667

Oklahoma: State Historic Preservation Officer, Oklahoma Historical Society, Historical Building, Oklahoma City, Oklahoma 73105, 405-521-2491

South Dakota: State Historic Preservation Officer, Historical Preservation Center, University of South Dakota, Alumni House, Vermillion, South Dakota 57069, 605-677-5314

Texas: Texas Historical Commission, P.O. Box 12276, Capitol Station, Austin, Texas 78711, 512-475-3092

Utah: Utah State Historical Society, 300 Rio Grande, Salt Lake City, Utah 84101, 801-533-7039

Wisconsin: State Historical Society of Wisconsin, 818 State Street, Madison, Wisconsin 53706, 608-262-3266

Wyoming: Wyoming Recreation Commission, 1920 Thomas Street, Cheyenne, Wyoming 82002, 307-777-7695

Southeast Regional Office

Southeast Region, 75 Spring St., NW., Atlanta, Georgia 30303, 404-242-2651

Alabama: Alabama Historical Commission, 725 Monroe Street, Montgomery, Alabama 36104, 205-832-6510

Arkansas: Arkansas Historic Preservation Program, Continental Building, Suite 500, Markham and Main Streets, Little Rock, Arkansas 72201, 501-371-2763

Florida: Bureau of Historic Preservation, Department of State, The Capitol, Tallahassee, Florida 32301, 904-487-2333

Georgia: Chief, Historic Preservation Section, Department of Natural Resources, 270 Washington, Street SW., Room 703C, Atlanta, Georgia 30334, 404-656-2840

Kentucky: State Historic Preservation Office, Kentucky Heritage Council, Capitol Plaza Tower, 9th floor, Frankfort, Kentucky 40601, 502-564-7005

Louisiana: Office of Cultural Development, P.O. Box 44247, Baton Rouge, Louisiana 70804, 504-925-3880

Mississippi: Department of Archives & History, P.O. Box 571, Jackson, Mississippi 39205, 601-359-1424

North Carolina: Department of Cultural Resources, 109 East Jones Street, Raleigh, North Carolina 27611, 919-733-7305

South Carolina: Department of Archives & History, 1430 Senate Street, Columbia, South Carolina 29211, 803-758-5816

Tennessee: Department of Conservation, 701 Broadway, Nashville, Tennessee 37203, 615-742-6747

Western Regional Office

Western Region, 450 Golden Gate Ave., San Francisco, CA 94102, 415-556-7741

American Samoa: Territorial Historic Preservation Officer, Department of Public Works, Government of American Samoa, Pago Pago, American Samoa 96799

Arizona: Chief, Office of Historic Preservation, Arizona State Parks, 1688 West Adams, Phoenix, Arizona 85007, 602-255-4174

California: State Historic Preservation Officer, Office of Historic Preservation, Department of Parks & Recreation, P.O.

Box 2390, Sacramento, California 95811, 916-445-8006

Guam: Department of Parks & Recreation, P.O. Box 2950, Agaña, Guam 96910, 477-9620/21, Ext. 4

Hawaii: State Historic Preservation Officer, Department of Land & Natural Resources, P.O. Box 621, Honolulu, Hawaii 96809, 808-548-7460

Idaho: Historic Preservation Coordinator, Idaho Historical Society, 610 North Julia Davis Drive, Boise, Idaho 83706, 208-334-2120

Nevada: State Historic Preservation Officer, Dept of Conservation & Natural Resources, Rm. 123, 201 S Fall Street, Carson City, Nevada 89710, 702-885-5138

Northern Mariana Islands: Historic Preservation Officer, c/o Department of Community & Cultural Affairs, Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands 96950, 701-224-2667

Oregon: State Parks Superintendent, 525 Trade Street SE, Salem, Oregon 97310, 503-376-6305

Trust Territory of the Pacific Islands: State Historic Preservation Officer, Land Resources Branch, Department of Resources & Development, Trust Territory of the Pacific Islands, Saipan, Mariana Islands 96950

Washington: State Historic Preservation Officer, 111 West 21st Avenue, KL-11, Olympia, Washington 98504, 206-753-4011

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 331 and 332

**Antacid Drug Products and Antiflatulent
Drug Products for Over-the-Counter
Human Use; Proposed Amendment to the
Monographs; Proposed Rulemaking**

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Parts 331 and 332****[Docket No. 75N-0357]****Antacid Drug Products and Antiflatulent Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monographs****AGENCY:** Food and Drug Administration.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the over-the-counter (OTC) monographs for antacid drug products and antiflatulent drug products by adding new sections that will exempt certain antacid, antiflatulent, and antacid/antiflatulent combination drug products from that part of the accidental overdose warning required by § 330.1(g) (21 CFR 330.1(g)) that states, "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." The exemption from the warning above is being provided because certain antacid and antiflatulent active ingredients contained in OTC drug products have been determined to have a low potential for acute toxicity resulting from accidental ingestion.

DATES: Written comments by June 12, 1984. Written comments on the agency's economic impact determination by August 13, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics National Center for Drugs and Biologics (HFN-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: Under 21 CFR 330.1(g), the following general warning statements are required on all orally administered OTC drug products: "Keep this and all drugs out of the reach of children. In case of accidental overdose, seek professional assistance or contact a poison control center immediately."

Section 330.1(g) also states that FDA will grant an exemption from these general warnings where appropriate upon petition.

In the Federal Register of June 4, 1974 (39 FR 19862), FDA issued a final monograph for OTC antacid drug

products (21 CFR Part 331) and a final monograph for OTC antiflatulent drug products (21 CFR Part 332) that established conditions under which these products are generally recognized as safe and effective and not misbranded. At that time, FDA exempted sodium bicarbonate powder from the general accidental overdose warning required by § 330.1(g) (39 FR 19867).

Since the publication of the antacid final monograph, a number of firms have petitioned for an exemption from the general overdose warning on the labeling of specific antacid, antiflatulent, and antacid/antiflatulent combination drug products. The firms assert that the antacid and antiflatulent ingredients covered by the petitions have a low potential for acute toxicity from accidental overdose. In support of these requests, the firms provided safety data in the form of acute toxicity studies that demonstrate that antacid ingredients have low potential for acute oral toxicity. Also, the firms cited bulletins from the National Clearing House for Poison Control Centers that show that no significant adverse effects from acute overdose have been reported for the various antacid ingredients. Several of the petitions also provided data demonstrating the safety of various antacid ingredients in combination with the antiflatulent ingredient simethicone.

Based on the data provided, FDA has granted each of these petitioners an exemption from the overdose portion of the general warning, i.e., "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." Labeling must continue to contain the first part of the warning, which states, "Keep this and all drugs out of the reach of children." Copies of the petitions and FDA's response are on file in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above).

The National Association of Pharmaceutical Manufacturers, by letters dated February 21, 1980 and July 10, 1981, has requested "that such an exemption should not be limited to those manufacturers who petition for such an exemption, but that the exemption should be published in the Federal Register and be applicable to all comparable products." The agency has considered this request and agrees that it is unnecessarily burdensome to require separate petitions for exemption from this warning from each manufacturer for every antacid product. FDA has granted petitions for certain ingredients within every class of antacid ingredients listed in the monograph, e.g.,

aluminum-containing ingredients, calcium-containing ingredients, silicates, etc., except for glycine and bismuth-containing ingredients for which no petitions were received.

In the case of glycine and bismuth-containing compounds, the agency has reviewed several sources regarding their toxicity (Refs. 1, 2, and 3). The data available for glycine indicate that acute toxicity from this naturally occurring amino acid would be highly unlikely. The National Institute for Occupational Safety and Health (Ref. 1) states that the lowest intravenous lethal dose of glycine in cats is 3.0 grams/kilogram. The Advisory Review Panel on OTC Antacid Drug Products (Ref. 2) noted that glycine is rapidly metabolized and is practically nontoxic even with high blood levels produced by intravenous injection. The Panel did not find it necessary to impose a specific dosage limitation. Therefore, the agency believes that glycine, identified in § 331.11(f) of the antacid monograph, also may be exempted from the general overdose warning and is proposing such an exemption in this document.

Regarding bismuth-containing compounds, Gosselin et al. (Ref. 3) considered the oral toxicity of bismuth salts to be low because they are poorly absorbed. However, Gosselin et al. note that methemoglobinemia has been reported from bismuth subnitrate ingestion, especially in infants. The agency is not aware of other data pertinent to the toxicity of the bismuth compounds. The agency believes that the toxicity data for bismuth compounds are insufficient to warrant an exemption from the accidental overdose warning at this time. However, the agency invites comment and data regarding the toxicity of bismuth products.

With the exception of bismuth-containing ingredients, the agency believes that all other antacid and antiflatulent ingredients have low potential for acute toxicity and, therefore, antacid/antiflatulent products containing these ingredients should be exempted from the accidental overdose warning. FDA is proposing to add new §§ 331.30(g) and 332.30(c) that will exempt antacid drug products identified in § 331.11 (a), (b), and (d) through (m) and antiflatulent drug products identified in § 332.10 or any allowable combination of these ingredients to be exempt from the general overdose warning requirement in § 330.1(g). Products containing these ingredients must continue to contain the first part of the warning, which states, "Keep this and all drugs out of the reach of children." Only products containing

bismuth, identified in § 331.11(c), must continue to bear the entire warning in § 330.1(g).

In conjunction with this action, it is also proposed that Part 331 be amended in § 331.11(k)(1) by deleting the last sentence of that paragraph, which states, "The warning required by § 330.1(g) concerning overdoses is not required on a product containing only sodium bicarbonate powder." This amendment will eliminate duplication of regulatory language concerning exemptions from § 330.1(g).

The agency proposes that this proposed rulemaking be effective upon publication of the final rule. However, manufacturers of OTC antacid drug products may adopt the labeling changes proposed in this document as of the date of publication of this proposal, subject to the possibility that FDA may change its position as a result of comments filed in response to this proposal.

References

(1) Lewis, R. J. and R. L. Fatken, editors, "Registry of Toxic Effects of Chemical Substances," 1979 Ed., Volume I, National Institute for Occupational Safety and Health, Cincinnati, p. 718, 1980.

(2) The Advisory Review Panel on OTC Antacid Drug Products, "Antacid Drug Products Proposed Rulemaking," *Federal Register*, April 5, 1973 (38 FR 8718).

(3) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products. Acute Poisoning," 4th Ed., The Williams and Wilkins Co., Baltimore, p. 93, 1976.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the *Federal Register* of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antacid and antitflatulent drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular

rulemaking for OTC antacid and antitflatulent drug product is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antacid and antitflatulent drug products. Comments regarding the impact of this rulemaking on OTC antacid and antitflatulent drug products should be accompanied by appropriate documentation. A period of 120 days from the date of publication of this proposed rulemaking in the *Federal Register* will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(d)(9) (proposed in the *Federal Register* of December 11, 1979; 44 FR 71742) this proposal is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 331

Labeling; OTC drugs, Antacid drug products.

21 CFR Part 332

Labeling, OTC drugs, Antitflatulent drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)) and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under 21 CFR 5.11, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Parts 331 and 332 as follows:

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

1. In Part 331:

§ 331.11 [Amended]

a. Section 331.11 *Listing of specific active ingredients* is amended in

paragraph (k)(1) by removing the last sentence, which reads "The warning required by § 330.1(g) concerning overdoses is not required on a product containing only sodium bicarbonate powder."

b. Section 331.30 is amended by adding new paragraph (g) to read as follows:

§ 331.30 Labeling of antacid products.

(g) *Exemption from the general accidental overdose warning.* The labeling for antacid drug products containing the active ingredients identified in § 331.11 (a), (b), and (d) through (m); permitted combinations of these ingredients provided for in § 331.10; and any of these ingredients or permitted combinations of these ingredients in combination with simethicone (identified in § 332.10 of this chapter) and provided for in § 331.15(c), are exempt from the requirement in § 330.1(g) of this chapter that the labeling bear the general warning statement "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." The labeling must continue to bear the first part of the general warning in § 330.1(g) of this chapter, which states, "Keep this and all drugs out of the reach of children."

PART 332—ANTIFLATULENT PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

2. In Part 332, § 332.30 is amended by adding new paragraph (c) to read as follows:

§ 332.30 Labeling of antitflatulent products.

(c) *Exemption from the general accidental overdose warning.* The labeling for antitflatulent drug products containing simethicone identified in § 332.10 and antacid/antitflatulent combination drug products provided for in § 332.15, containing the active ingredients identified in § 331.11 (a), (b), and (d) through (m) of this chapter are exempt from the requirement in § 330.1(g) of this chapter that the labeling bear the general warning statement "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." The labeling must continue to bear the first part of the general warning in § 330.1(g) of this chapter, which states, "Keep this and all drugs out of the reach of children."

Interested persons may, on or before June 12, 1984, submit written comments to the Dockets Management Branch

(HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Written comments on the agency's economic impact determination may be submitted on or before August 13, 1984. Three copies of all comments are to be submitted, except that individuals may

submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 19, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-9904 Filed 4-12-84; 8:45 am]

BILLING CODE 4150-01-M

Testis Great Testes

Friday
April 13, 1984

Part VII

Department of Health and Human Services

Public Health Service

**Announcement of Availability of Grants
for Family Planning Services Delivery
Improvement Research; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Announcement of Availability of Grants for Family Planning Services Delivery Improvement Research

AGENCY: Office of Family Planning, PHS, HHS.

ACTION: Notice.

The Office of Family Planning (OFP) of the Public Health Service invites research grant applications on a range of topics about which greater knowledge is needed as a basis for improving the delivery of family planning services. Section 1004(a) of Title X of the Public Health Service Act authorizes grants to public or non-profit private entities for research projects in the field of program implementation related to family planning services (Catalogue of Federal Domestic Assistance No. 13.974).

This request for applications is for a single competition with a specified deadline (June 1, 1984) for receipt of applications. Proposals will be reviewed by a specially convened group of scientific peer reviewers under the auspices of the Division of Research Grants, National Institutes of Health. Proposal review and award decisions will take place during the summer, 1984. The earliest start date for grants would be September 15, 1984, and proposals should be written with that date in mind.

In this RFA, several areas of research have been identified where current knowledge is inadequate from the viewpoint of delivery of family planning services. These research areas are the portion of the FY 1984 service delivery improvement research agenda that is especially suitable for field-initiated research studies. Other areas are suitable for directed activities which will be commissioned through Requests for Proposals or conducted through interagency agreements.

I. Research Areas

The specific areas identified for research in this RFA cover a broad range of topics of interest to those concerned with the improvement of family planning service delivery. The goal is to direct research attention to studies that will produce results having the greatest relevance for family service delivery improvement.

The topic areas identified for service delivery improvement research by this RFA are as follows:

1. What are the particular family planning needs of underserved subgroups of the low-income population? What are the personal,

cultural, and institutional factors which influence whether or not individuals in these groups obtain needed family planning services from the public or private sector? What efforts are currently being made by family planning clinics to address the problems related to these factors?

2. What particular problems of family planning service delivery exist in rural locations? What are the crucial factors influencing whether or not individuals residing in rural areas obtain family planning services from the public or private sector? Which managerial and organizational patterns hold the most promise for efficient and effective provision of family planning services in rural areas? In what ways must issues of cost be approached differently in rural settings?

3. What are the managerial and organizational factors involved in the provision of effective and efficient services to poor women in a family planning program and its clinics? What differences exist in these managerial and organizational factors by such variables as type of low-income client served, effectiveness, cost, quality, and location in which services are delivered?

4. What various configurations of staff are associated with optimal provision of family planning services for poor women in different clinic settings? What are problems that family planning clinics experience in establishing and maintaining optimal staffing patterns, including the provision of continuing professional education for staff?

5. What are the different types of counseling available through family planning clinics? What cost variations exist with regard to the different types of counseling approaches? Are there variations in counseling approaches and costs according to client characteristics? How successful are the different counseling approaches in assisting clinic clients to plan their families?

6. What are the implications for the delivery of family planning services when they are integrated with other health services? More specifically, what is the impact on staffing patterns, cost, quality of care, patient recruitment, etc.? Under what conditions is integration most likely to result in desired outcomes on these dimensions? What kinds of arrangements help to offset possible problems that may occur when family planning services are integrated with other health services?

7. What is the current nature of infertility problems among poor women? What factors are associated with this condition? What type and amount of infertility services do poor women receive in the public and private

sectors? What are the costs and outcomes associated with the treatment of each infertility problem category? How does each of the above vary by individual characteristics?

8. What have been the most effective ways of involving males in family planning in the public and private sectors? What are the costs of different modes of male family planning involvement and what are associated differences in outcomes, including the male's influence on his partner's effective use of contraceptives?

When addressing the subject of poor women in the research areas above, every effort should be made to distinguish between those individuals below 100 percent of poverty and those between 100 and 150 percent of poverty.

II. Research Scope

This RFA encourages a variety of social science and other scholarly approaches and methodologies in the study of the research questions posed above. A program goal is to develop a broad research base, but limited available funds may preclude funding in all eight areas. The program is committed to funding only proposals that excel in meeting the review criteria enumerated in Section V below and that show substantial promise of producing results that will have relevance for policy-makers and service providers.

Applications should include a well-organized statement of the problem to be addressed, the research design, the conceptual framework within which the design has been developed, the methodology to be employed, the evidence upon which the analysis will rely, and the manner in which the evidence will be analyzed. The question of how findings from the study sample can be generalized to larger populations served by family planning services programs should be addressed.

In order to make data available to other interested scholars and policy-makers as quickly and broadly as possible, copies of data sets and accompanying documentation produced with funds granted through this RFA will be deposited with a public use data archive, such as the Data Archive on Adolescent Pregnancy and Pregnancy Prevention or the Inter-University Consortium for Political and Social Research; alternatively, data sets may be deposited with OFP. Data sets will be deposited only after: (1) appropriate deletions have been made to protect the personal privacy of subjects and (2) the grantee has had a reasonable length of time, not to exceed 18 months after the final budget period, to complete the

study and report its results. The cost of making such data available should be budgeted in the proposal, and applications should include a plan for making the data-sets available to a public use data archive or the Office of Family Planning.

III. Mechanism of Support

Research grants are authorized under Section 1004(a) of the Public Health Service Act (42 U.S.C. 300a-2(a)). Because a variety of approaches would represent valid responses to this RFA, it is anticipated that direct costs will range from approximately \$10,000 to \$100,000 per award year. While all applications in that cost range will be considered equally on their scientific merits, OFP wishes to encourage applications with total direct costs below \$20,000 as a way of stimulating (1) participation by new investigators, (2) test applications of innovative research techniques, and (3) creative use of existing data sets or ongoing data collection systems. A program goal will be to fund projects both above and below \$20,000 direct costs so that a variety of approaches is supported. Applicants should specify whether cost sharing will be accomplished through Institutional Agreement or negotiated prior to award. Grant policies of the Public Health Service will prevail. As much as \$0.6 million may be available for grants in Fiscal Year 1984 under this announcement, and as many as 6-12 research grants may be awarded.

IV. Eligibility

This competition is open to any public or private non-profit institution or agency. Salary information for all project personnel should be included in the original application but may be omitted from copies. Confidential business information in applications will be protected from disclosure under provisions of the Freedom of Information Act.

V. Review Criteria

The review of applications is governed by Title 42 CFR Part 52. Review criteria include:

- (1) Scientific merit and significance of the project;
- (2) Competency of proposed staff in relation to the type of research involved;
- (3) Feasibility of the project;
- (4) Reasonableness of proposed budget period in relation to the proposed research;
- (5) Amount of grant funds necessary for completion, and adequacy of applicant's resources available for project;
- (6) Adequacy of methodology proposed to carry out the research; and
- (7) The adequacy of the proposed means for protecting against adverse effects upon humans, animals, or the environment, where an application involves activities which could have such effects.

VI. Method of Applying

Applications should be submitted on Form PHS-398. This form may be

obtained from university offices of sponsored research or from the Division of Research Grants, NIH (address below). The instructions in the application kit should be followed.

No review is required under OMB Circular A-95, or by a Health Planning Agency.

An original and 25 copies of the application must be postmarked before 4:30 p.m. Eastern time, on June 1, 1984. Applications should be sent or delivered to:

Division of Research Grants, National Institutes of Health (NIH), Westwood Building, Room 240; 5333 Westbard Avenue, Bethesda, Maryland 20205.

Type across the top of the face page: THIS APPLICATION IS SUBMITTED IN RESPONSE TO THE RFA ENTITLED "FAMILY PLANNING SERVICES DELIVERY IMPROVEMENT RESEARCH." A copy of the full proposal should be sent to:

Donald Underwood; Office of Grants Management, Office of Population Affairs, DHHS North Building, Room 1351, 330 Independence Avenue, SW., Washington, D.C. 20201.

If you have questions regarding this RFA, please contact Dr. Patricia Thompson, OFP, at 202/245-0151.

Dated: April 10, 1984.

Marjory E. Mecklenburg,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 84-10002 Filed 4-12-84; 8:45 am]

BILLING CODE 4160-17-M

Best of Federal Paper

Friday
April 13, 1984

Part VIII

Office of Management and Budget

Cumulative Report on Rescissions and
Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET**Cumulative Report on Rescissions and Deferrals**

April 1, 1984.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of April 1, 1984 of nine rescission proposals and 59 deferrals contained in the first eight special messages of FY 1984. These messages were transmitted to the Congress on October 3, November 17, December 14 and December 21, 1983;

and January 12, February 1 and 22, and March 26, 1984.

Rescissions (Table A and Attachment A)

As of April 1, 1984, there were no rescission proposals pending before the Congress. Attachment A shows the history and status of the nine rescissions proposed by the President in 1984.

Deferrals (Table B and Attachment B)

As of April 1, 1984, \$4,093.3 million in 1984 budget authority was being deferred from obligation and \$11,000 in 1984 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1984.

Information From Special Messages

The special messages containing information on the rescission proposal and deferrals covered by this

cumulative report are printed in the **Federal Register** listed below:

Vol. 48, FR p. 45730, Thursday, October 6, 1983

Vol. 48, FR p. 53060, Wednesday, November 23, 1983

Vol. 48, FR p. 56720, Thursday, December 22, 1983

Vol. 48, FR p. 57098, Tuesday, December 27, 1983

Vol. 49, FR p. 2076, Tuesday, January 17, 1984

Vol. 49, FR p. 4692, Tuesday, February 7, 1984

Vol. 49, FR p. 7342, Tuesday, February 28, 1984

Vol. 49, FR p. 13096, Monday, April 2, 1984

David A. Stockman,
Director.

BILLING CODE 3110-01-M

-2-

TABLE A
STATUS OF 1984 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	\$ 636.4
Accepted by the Congress.....	-0-
Rejected by the Congress.....	-636.4
Pending before the Congress.....	\$ -0-

TABLE B
STATUS OF 1984 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	\$ 7,304.2
Routine Executive releases through April 1, 1984 (OMB/Agency Releases of \$3,278.1 million and cumulative adjustments of -\$69.3 million).....	-3,208.8
Overtaken by the Congress.....	-2.0
Currently before the Congress.....	\$ 4,093.3 <u>a/</u>

a/ This amount includes \$11,000 in outlays for a Department of the Treasury deferral (D84-16).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1984

As of April 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently Before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Payment for operation of low-income housing.....	R84-2		331,431	2-1-84		331,431	3-28-84	
DEPARTMENT OF THE INTERIOR								
National Park Service								
Land acquisition.....	R84-3		30,000	2-1-84		30,000	3-28-84	
DEPARTMENT OF LABOR								
Occupational Safety and Health Administration.....	R84-1		1,700	12-21-83		1,700	3-19-84	
OTHER INDEPENDENT AGENCIES								
Corporation for Public Broadcasting								
Public broadcasting fund.....	R84-9		20,000	2-1-84		20,000	3-28-84	
Delaware and Susquehanna River Basin Commissions								
Salaries and expenses, Delaware River Basin Commission.....	R84-4		19	2-1-84		19	3-28-84	
Salaries and expenses, Susquehanna River Basin Commission.....	R84-5		24	2-1-84		24	3-28-84	
Panama Canal Commission								
Operating expenses.....	R84-6A		17,750	2-1-84		17,750	3-28-84	
Capital outlay.....	R84-6B		7,625	2-1-84		7,625	3-28-84	
OFF-BUDGET FEDERAL ENTITIES								
DEPARTMENT OF AGRICULTURE								
Rural Electrification Administration								
Rural electrification and telephone revolving fund.....	R84-7		197,862	2-1-84		197,862	3-28-84	
Rural telephone bank.....	R84-8		30,000	2-1-84		30,000	3-28-84	
Rescissions, total BA.....			636,411			636,411		

Attachment B - Status of Deferrals - Fiscal Year 1984

As of April 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congress- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 4-1-84
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs.....	R84-1	10,000		10-3-83					10,000
International Security Assistance									
Foreign military sales credit.....	R84-30	1,315,000		1-12-84	-187000				1,128,000
Economic support fund.....	R84-24 R84-24A	303,880	2,267,691	12-14-83 1-12-84	-1994741				576,810
Military assistance.....	R84-31	426,970		1-12-84	-330030				96,940
DEPARTMENT OF AGRICULTURE									
Soil Conservation Service									
Watershed and flood prevention operations.....	R84-49	8,138		2-1-84					8,138
Forest Service									
Construction.....	R84-37	10,814		2-1-84					10,814
Timber salvage sales.....	R84-2 R84-2A	6,211	9,210	10-3-83 1-12-84					15,421
Expenses, brush disposal.....	R84-3 R84-3A	42,674	12,398	10-3-83 1-12-84					55,072
DEPARTMENT OF COMMERCE									
International Trade Administration									
Participation in U.S. expositions.....	R84-32	550		1-12-84					550
National Oceanic & Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries.....	R84-4	33,600		10-3-83	-33600				0
DEPARTMENT OF DEFENSE - MILITARY									
Operation and Maintenance									
Environmental restoration, defense.....	R84-33	75,000		1-12-84	-75000				0
Military Construction									
Military construction, all services.....	R84-5 R84-5A	414,597	488,340	10-3-83 12-14-83	-380554			125,198	647,581

As of April 1, 1984 Amounts in Thousands of Dollars		Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 4-1-84
Agency/Bureau/Account		Deferral Number							
Family Housing, Defense									
Family housing, Air Force.....		D84-6	53,000		10-3-83				
		D84-6A		20,131	12-14-83	-73131			0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....		D84-7	777		10-3-83				
		D84-7A		385	1-12-84				1,162
DEPARTMENT OF EDUCATION									
Office of Postsecondary Education									
Higher education.....		D84-38	500		2-1-84				500
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply, research & development activities.....		D84-39	10,052		2-1-84				10,052
Uranium supply and enrichment activities....		D84-8	130,000		10-3-83				130,000
Fossil energy research and development.....		D84-21	20,326		11-17-83	-20326			
		D84-21A		500	12-14-83				
		D84-21B		8,993	2-1-84				9,493
Fossil energy construction.....		D84-25	38,038	1,962	12-14-83			-26000	
		D84-25A		23,196	2-1-84				37,196
Naval petroleum and oil shale reserves.....		D84-40	41,500		2-1-84				41,500
Energy conservation.....		D84-41	10,077		2-1-84				10,077
Strategic petroleum reserve.....		D84-26	12,707		12-14-83				
		D84-26A		256	2-1-84				12,963
Alternative fuels production.....		D84-22	13,800		11-17-83				
		D84-22A		4,300	2-1-84	-12300			5,800
Power Marketing Administrations									
Operation and maintenance, Southwestern Power Administration.....		D84-42	7,000		2-1-84				7,000
Departmental Administration									
Departmental administration.....		D84-43	29,053		2-1-84				29,053
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Centers for Disease Control									
Disease control.....		D84-27	15,560		12-14-83				15,560
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program).....		D84-9	6,463		10-3-83				
		D84-9A		571	1-12-84				7,034
Social Security Administration									
Limitation on administrative expenses (construction).....		D84-10	10,571		10-3-83				
		D84-10A		10,491	12-21-83	-14			21,048
DEPARTMENT OF THE INTERIOR									
Minerals Management Service									
Payments for proceeds, sale of water, Mineral Leasing Act of 1920.....		D84-11	48		10-3-83				48
Bureau of the Mines									
Mines and minerals.....		D84-44	1,667		2-1-84				1,667
National Park Service									
Land acquisition and state assistance (contract authority).....		D84-23	30,000		11-17-83				
		D84-23A		2,700	2-1-84			-30000	2,700
Construction (trust fund).....		D84-50	14,000		2-22-84				14,000
Office of the Secretary									
Office of Water Policy.....		D84-51	300		2-22-84				300
DEPARTMENT OF JUSTICE									
Interagency Law Enforcement									
Organized crime drug enforcement.....		D84-57	272		3-26-84				272
Federal Bureau of Investigation									
Salaries and expenses.....		D84-58	42,000		3-26-84				42,000
Federal Prison System									
Buildings and facilities.....		D84-28	22,025		12-14-83				
		D84-28A		23,752					45,777
Office of Justice Assistance, Research and Statistics									
Law enforcement assistance.....		D84-52	296		2-27-84				296

As of April 1, 1984 Amounts in Thousands of Dollars		Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 4-1-84
Agency/Bureau/Account		Deferral Number							
DEPARTMENT OF STATE									
International Organizations and Conferences									
Contributions to international organizations.....	084-46	4,723		2-1-84					4,723
Contributions for international peacekeeping activities.....	084-45	10,879		2-1-84					10,879
United States emergency refugee and migration assistance fund.....	084-12 084-12A	37,928	192	10-3-83 1-2-84					38,120
United States bilateral science and technology agreements.....	084-13	2,000		10-3-83					2,000
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration									
Railroad research and development.....	084-53	578		2-22-84					578
Federal Aviation Administration									
Facilities, engineering and development....	084-59	360		3-26-84					360
Construction, Washington Metropolitan Airports.....	084-54	277		2-22-84					277
Facilities and equipment (airport and airway trust).....	084-14	1,083,268		10-3-83	-153063				930,205
U.S. Coast Guard									
Retired pay.....	084-55	13,350		2-22-84					13,350
Maritime Administration									
Ship construction.....	084-47	7,000		2-1-84					7,000
Office of the Secretary									
Transportation planning, research and development.....	084-56	160		2-22-84					160
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
State and local government fiscal assistance trust fund.....	084-15 084-16	56,068 15,209		10-3-83 10-3-83	-2866 -15198			111	53,313 11
Bureau of the Mint									
Expansion and improvements.....	084-29	256		12-14-83	-256				
OTHER INDEPENDENT AGENCIES									
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund.....	084-17	13,148		10-3-83					13,148
Railroad Retirement Board									
Milwaukee Railroad restructuring, administration.....	084-18 084-18A	85	147	10-3-83 12-14-83					232
Tennessee Valley Authority									
Tennessee Valley Authority fund.....	084-19 084-40	7,000 2,192		10-3-83 2-1-84					7,000 2,192
United States Information Agency									
Salaries and expenses.....	084-34	2,400		1-12-84					2,400
Salaries and expenses (special foreign currency program).....	084-35	2,900		1-12-84					2,900
Acquisition and construction of radio facilities.....	084-36	9,645		1-12-84					9,645
United States Railway Association									
Administrative expenses.....	084-20	2,050		10-3-83		-2050	98-181		
TOTAL, DEFERRALS.....		4,428,942	2,875,215		-3,278,079	-2,050		69,309	4,093,117

Notes: Deferral 084-25 was reported as part of 084-21 in the second special message. In the third special message the deferral was reported separately and adjusted upward slightly.

Of the amount deferred as 084-25, \$26 million was transferred to Fossil energy research and development pursuant to the 1984 Interior and Related Agencies Appropriations Act.

All of the above amounts represent budget authority except one general revenue sharing deferral (084-16) of outlays only.

[FR Doc. 84-10048 Filed 4-12-84; 8:45 am]

BILLING CODE 3110-01-C

Reader Aids

Federal Register

Vol. 49, No. 73

Friday, April 13, 1984

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H.J. Res. 432/Pub. L. 98-255

Designating the week of April 8 through 14, 1984, as "Parkinson's Disease Awareness Week". (Apr. 9, 1984; 98 Stat. 124) Price: \$1.50

S. 2391 / Pub. L. 98-256

To authorize the President to appoint Donald D. Engen to the Office of Administrator of the Federal Aviation Administration. (Apr. 10, 1984; 98 Stat. 125) Price: \$1.50

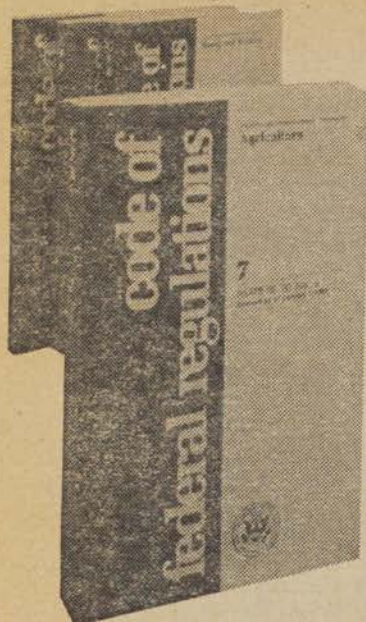
H.R. 3249 / Pub. L. 98-257

To charter the National Academy of Public Administration. (Apr. 10, 1984; 98 Stat. 127) Price: \$1.50

H.R. 4072 / Pub. L. 98-258

Agricultural Programs Adjustment Act of 1984 (Apr. 10, 1984; 98 Stat. 130) Price: \$2.00

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